United States Court of Appeals

for the Second Circuit

APPENDIX

75-7027 Original

~~74C 1279~~

United States Court of Appeals

For the Second Circuit

Docket No. 74C 1279

ROBERT W. MC CUNE,

Plaintiff-Appellee,

— against —

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants-Appellants.

On Appeal From The United States District Court
For The Eastern District of New York

JOINT APPENDIX

Volume I — Pages A-1 to A-512

JOHN F. O'SHAUGHNESSY
County Attorney of Nassau County
Attorney for Defendants-Appellants
Nassau County Executive Building
Mineola, New York 11501
(516) 535-2990

RICHARD HARTMAN, ESQ.
Attorney for Plaintiff-Appellee
300 Old Country Road
Mineola, New York
(516) 742-9000

3

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries	A- 1
Affidavit of Attorney for Plaintiff	A- 4
Order to Show Cause	A- 6
Summons and Complaint	A- 24
Affidavit of Louis Schultz, Esq., Senior Deputy County Attorney of Nassau County, in Opposition to Order to Show Cause	A- 46
Stipulation Extending Time to Answer	A- 68
Transcript of Hearing of September 16, 1974	A- 70
Transcript of Continued Hearing of September 27, 1974	A-142
Transcript of Continued Hearing of October 25, 1974	A-304
Memorandum Decision of Chief Judge Jacob Mishler dated December 13, 1974	A-497
Judgment	A-510
Notice of Appeal	A-511
Witnesses for Defendants September 16, 1974 Hearing	
Inspector William L. McBride	
Direct	A- 78
Cross	A- 96
Redirect	A-116

Inspector William Willett
Direct A-118
Cross A-124

Court's Colloquy A-133

September 27, 1974 Continued Hearing

Captain Robert Carney
Direct A-144
Cross A-158

Deputy Chief Inspector Vincent Redican
Direct A-165
Cross A-173
Redirect A-180
Recross A-181
Redirect A-181
Recross A-183

Deputy Inspector William Kane
Direct A-185

Chief Inspector Herman Maickel
Direct A-205
Cross A-211
Redirect A-218

First Deputy Police Commissioner James R. Ketcham
Direct A-219
Cross A-228

Deputy Chief Inspector Vincent Redican
Redirect A-231
Recross A-232

Witnesses for Plaintiff

David A. Martindale
Direct A-234

Joseph Carlino
Direct A-271
Cross A-278

David A. Martindale
Direct A-287

Court's Colloquy A-291

October 25, 1974 Continued Hearing

Joseph Carlino
Direct A-308
Cross A-359

David A. Martindale
Direct A-407
Cross A-413

Joseph Carlino
Recross A-444
Redirect A-451

Witnesses for Defendant

Allan M. Lippman
Direct A-453
Cross A-477

Chief Inspector Herman Maickel A-487

Court's Colloquy A-493

Exhibit

Exhibit 4-A A-512

D. C. [illegible] 3269

DOCKET

MISHLER,

TITLE OF CASE	ATTORNEYS
ROBERT W. MacCRIE - [illegible] - LOUIS J. [illegible], Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU	*For Plaintiff:* Richard Hart 300 Old Country Roa Mineola, N.Y. 1150 (516) 742-9000 *For Defendant:*

BASIS OF ACTION: Civil Rights Act/ Pertinent regulations
Seeks Injunction

JURY TRIAL CLAIMED
ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DIS
9-5-74	Complaint	15 00		12-27-74	Notice of Appeal	5 -	
[illegible]	[illegible]		15	12-27-74	Paid To Treas.		5

ABSTRACT OF COSTS			RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT		

MD. CLER - MD. - [illegible] etc. et ano

74 C 1279

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
		1	JS5
9-5-74	Complaint filed. Summons issued		
9-5-74	[illegible] AYFIEL, J. - Order to show cause dtd 9-5-74 for an order to declare certain rules of the Nassau County Police Dept null & void, etc. ret 9-9-74 at 10 A.M., with T.R.O. and memorandum of law in support filed.	2/3	
9-5-74	Affidavit of Allen R. Morgenstern re intention to seek order to show cause on 9-5-74 filed.	4	
9-5-74	Affidavit of service of order to show cause filed.	5	
9-9-74	Before MISHLER, CH J - Case called. Hearing on order to show cause set down for 9-12-74 at 2 P.M.		
/12/74	Before [illegible]ER, CH. J. - Case called. Hearing adjd to 9/16/74		
9/13/74	Summons issued and filed. Executed.	6	
9-16-74	Before MISHLER, CH. J. - Case called. Hearing held on order to show cause. Hearing cont'd to 9-27-74 at 2PM		
9-24-74	Stenographer's transcript dtd 9-16-74 filed.	7 ✓	
9-27-74	Before MISHLER, CH. J - Case called. Hearing on order to show cause resumed. Deft rests. Hearing continued to 10-25-74 at 2 P.M. [illegible]		
0/8/74	Stenographer's transcript of Sept. 27, 1974 filed.	8 ✓	
10-25-74	Before MISHLER, CH. J - Case called. Hearing continued. Both sides rest. Decision reserved on order to show cause. Hearing concluded.		
10-30-74	Stenographer's transcript dtd 10-25-74 filed.	9 ✓	
11-19-74	Stipulation extending time to answer complaint to 20 days after the service of a copy of the order or judgment filed.	10	
12-13-74	Memorandum of decision & By MISHLER, J.-Order dtd 12-13-74 JUDGMENT is granted in favor of the pltff and against defts declaring rules unconstitutional, void, and of no effect etc filed. (p/c mailed)	11 ✓	
12/18/74	By MISHLER, CH.J.- JUDGMENT undated filed that the pltff have a judgment against thedeft declaring Art. VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Dept, unconstitutional and null and void, and it is further ordered that the defts are permanently enjoined frmm enforcing the same. P.C. mailed to the attys.	12 ✓	
12-27-74	Notice of appeal filed. Duplicate mailed to C of A & pltff, jn	13	
1/3/75	Notice of Motion, ret. 1/10/75 filed re: staying of execution of any proceedings to enforce judgment in favor of pltff, etc.	14 ✓	
1/3/75	Memorandum of Law in Support of above motion filed.	15 ✓	

74C-1279 McCUNE vs. FRANK, et ano

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
1-10-75	Affidavit of Allen R. Morganstern in opposition to motion to stay/pendency during of action filed.			6
1-10-75	Memorandum of law on behalf of pltff filed.			17
1-10-75	Before MISHLER, J.-Deft's motion stauing execution of any & all proceedings to enforce the judgment submitted. Decision reserved.			

D. C. 110

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ SEP 5 1974 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

ROBERT W. MC CUNE,

Plaintiff,

-against-

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendant.

----------X

74C 1279

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NASSAU) SS:

ALLEN R. MORGANSTERN, being duly sworn, deposes and says:

That I am an attorney, duly licensed to practise law in the State of New York, and am associated with the offices of RICHARD HARTMAN, ESQ., the attorneys for the Plaintiff herein.

That I am fully familiar with all the facts and circumstances surrounding the above referenced matter and make this Affidavit in support of the relief seeking a Temporary Restraining Order.

That on September 3, 1974, personally spoke with JAMES N. GALLAGHER, Assistant County Attorney for the County of Nassau, the attorneys for the Defendants named herein.

That in said above referenced telephone conversation, I advised Mr. Gallagher that the Plaintiff herein, by his attorney, would appear in the United States District Court for the Eastern District of New York on September 5, 1974, at 9:30 o'clock in the forenoon, on that day to seek a Preliminary Injunction restraining the above named Defendants from enforcing Article VIII, Rule 22, as amended, of the Rules and Regulations of the Nassau County Police Department.

Mr. Gallagher advised me that on said day, someone from the County Attorney's office for the County of Nassau would appear in this Court with regard to said motion seeking a Preliminary Injunction.

Allen R. Morganstern

dated: Mineola, New York
September 5, 1974

Allen R. Morganstern

Sworn to before me on September 5, 1974

Leonard B. Symons

LEONARD B. SYMONS
NOTARY PUBLIC, State of New York
No. 30-[illegible]225
Qualified in Nassau County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

ROBERT W. MC CUNE,

Plaintiff,

- against -

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

----------X

740 1279

ORDER TO SHOW CAUSE

Upon the annexed Affidavit of ROBERT W. MC CUNE, duly sworn to on the 1st day of Sept., 1974, upon all of the proceedings heretofore had herein, and upon the motion of RICHARD HARTMAN, ESQ., attorney for the Plaintiff, it is:

ORDERED, that the Defendants or their attorney show cause before this Court at a Term of this Court 9th, to be held at the Courthouse for the Federal District Court, the Eastern District of New York located at Cadmen Plaza, Brooklyn, New York on the day of September, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard why an Order should not be made and entered herein declaring that the rights and other legal relations of the parties herein are as follows:

1. That [illegible], Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department be declared unconstitutional and therefore null, void and invalid: and

2. That the Defendant, LOUIS J. FRANK, Commissioner of Police, County of Nassau, be restrained from promulgating

and enforcing other similar such rules and regulations which are contrary to the constitutional rights of the members of said Police Department; and

3. That the charges and specification currently being lodged against the Plaintiff herein by the Defendant, for violation of Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department be dismissed as violation of the constitutional rights of the Plaintiff; and

4. That the appointment procedure followed by the Defendant in an attempt to follow Sections 75 and 76 of the Civil Service Law of the State of New York, wherein Defendant, LOUIS J. FRANK, as Commissioner of Police, appoints from his ranks a trial commissioner to investigate, judge, and make recommendations to Defendant, Police Commissioner, as to the guilt or innocence of the Plaintiff herein as to the alleged violation of the Rules and Regulations of the Nassau County Police Department is unconstitutional and therefore null, void and invalid as it is contrary to the Plaintiff's constitutional guarantees of due process; and it is further

ORDERED, that pending the hearing and determination of this matter brought on by an Order to Show Cause, and the Defendants be and are hereby temporarily enjoined from enforcing Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department, that the Defendants be and are hereby temporarily enjoined pending the hearing and determination of this matter from prosecuting the Plaintiff herein pursuant to departmental procedure for a violation of Article VIII,

Rule 22 of the Rules and Regulations of the Nassau County Police Department, and it is further

ORDERED, that service of a copy of this Order to Show Cause and Affidavit upon which it is based, upon Defendants on or before the 6th day of September, 1974, be deemed good and sufficient service upon Defendants.

SO ORDERED

LEO F. RAYFIEL
UNITED STATES DISTRICT JUDGE

151

At the United States Courthouse
[illegible]e Eastern District of New York,
Br[illegible]lyn, New York, this 5th day
of September, 1974.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

ROBERT W. MC CUNE,

Plaintiff,

- against -

AFFIDAVIT

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

----------X

STATE OF NEW YORK)
COUNTY OF NASSAU):ss:

ROBERT W. MC CUNE, being duly sworn, deposes and says:

FIRST: That at all times hereinafter mentioned, the Plaintiff, ROBERT W. MC CUNE, was and still is employed as a Nassau County Police Officer.

SECOND: That at all times hereinafter mentioned, the Defendant, LOUIS J. FRANK, was and still is the duly appointed Commissioner of Police of the Police Department for the County of Nassau, and as such, is responsible for promulgating and enforcing the Rules and Regulations of the Police Department of the County of Nassau.

THIRD: That at all times hereinafter mentioned, the Defendant, POLICE DEPARTMENT OF THE COUNTY OF NASSAU, STATE OF NEW YORK, was and still is the municipal entity charged with the police function within the County of Nassau, State of New York.

FOURTH: That as a Nassau County Police Officer, Plaintiff, ROBERT W. MC CUNE, is subject to obeying the Rules and Regulations of the Police Department for the County of Nassau.

FIFTH: That under Article VIII, Rule 22, the Plaintiff, ROBERT W. MC CUNE, is required to meet the following personal appearance standards, to wit,

> "Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by their Commanding Officer due to special assignment:
>
> Haircuts - Hair shall be neatly cut and trimmed at all times while on duty. Hair styles shall be conservative and not excessive in length.
>
> Sideburns - Sideburns shall not extend below the mid part of the ear and shall be trimmed level.
>
> Moustaches- A short and neatly trimmed moustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.
>
> Beards
> Goatees - Male personnel shall be clean shaven when reporting for duty. Beards or goatees shall not be worn while on duty. A growth of whiskers shall be permitted while on duty for medical reasons only when approved by the Chief Surgeon."

SIXTH: That on or about the 23rd day of April, 1971, the Defendant, LOUIS J. FRANK, issued teletype order number 114 amending the Rules and Regulations of the Police Department, County of Nassau, so as to provide in Article VIII, Rule 22 that :

> "Personal Appearance - The provisions of Article VIII, Rule 22 of the Rules and Regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to apoint below 3/4 of an inch above the bottom of the ear lobe. All provisions relating to moustaches, beards and haircuts shall be strictly conformed with."

SEVENTH: That under Article VIII, Rule 22 as amended, Plaintiff, ROBERT W. MC CUNE, is deprived of a basic unalienable right, to wit, the freedom of choice as to his personal appearance and thus is denied his constitutional guarantees as set forth in the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution. In addition, said Department Rules and Regulations violate Title 42 of the United States Code, Section 1983.

EIGHTH: With regard to the above, the Plaintiff, ROBERT W. MC CUNE, states to this Court that his appearance meets the criteria recognized by this Court in its decision in the case of Dwen v. Barry decided by the Honorable Justice Jacob Mishler dated May 30, 1974, a copy of which is annexed hereto as Exhibit "A".

NINTH: That on July 5, 1974, the Plaintiff was personally served with charges and specifications alleging that on or about twelve-hundred (1200) hours on May 14, 1974, the Defendant did wear his sideburns extending below the mid part of his ears to wit, to the lower edge of his earlobe and then flared out to a width of at least 1 1/4 inches, thereby violating Article VIII, Rule 22 of the Rules and Regulations of the Police Department of the County of Nassau, State of New York. A copy of said charges and specifications is annexed hereto as Exhibit "B".

TENTH: Additionally, the standards set forth in Article VIII, Rule 22 as amended, not only imposes unreasonable grooming standards upon the Plaintiff, ROBERT W. MC CUNE, while on duty, but additionally imposes said grooming standards upon him while off duty due to the facts and circumstances surrounding said standards.

ELEVENTH: Without going into an extensive legal argument, Plaintiff, ROBERT W. MC CUNE, merely wishes to point out to the Court that the law has long since struck down the concept that a muncipal employer can infringe upon

basic constitutional guarantees of its employees as a condition of said employment.

TWELFTH: In furtherance of the above, it is futher represented to this Court that for a municipal employer to infringe upon an employee's fundamental constitutional rights as a condition of said employment, said municipal employer must show an overriding public need to justify said infringement.

THIRTEENTH: Plaintiff, ROBERT W. MC CUNE, respectfully submits to this Court that the requirements set forth in Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department do not meet any compelling or overriding public need to justify the infringement of his constitutionally guaranteed rights and therefore the existence of said Rule and Regulation is arbitrary, capricious and an unreasonable restriction upon the Plaintiff's constitutional as well as statutory fundamental rights.

FOURTEENTH: That on July 16, 1974, the Plaintiff entered a not guilty plea before a representative of the Defendant, LOUIS J. FRANK, Police Commissioner, and a trail date was set for September 17, 1974.

FIFTEENTH: That the procedure followed by the Defendant, LOUIS J. FRANK, in an attempt to comply with sections 75 and 76 of the Civil Service Law of the state of New York, wherein, said Defendant, LOUIS J. FRANK, appoints from his ranks, a trial commissioner to investigate, judge and make recommendations to Defendant, LOUIS J. FRANK, as to the guilt or innocence of the Plaintiff herein as to alleged violations of the Rules and Regulations of the Nassau County Police Department is unconstitutional and therefore null, void and invalid as it is contrary to the plaintiff's constitutional guarantees of due process as set forth in the Fifth and Fourteenth Amendments to the United States Constitution.

SIXTEENTH: For the Defendant, LOUIS J. FRANK, to appoint a trial commissioner from the ranks of the Nassau County Police Department, when said trial commissioner is directly beholden to said Defendant, LOUIS J. FRANK, as to promotion, placement and appointment, points up the obvious that an impartial trial conducted by said trial commissioner with regard to the Plaintiff herein cannot be accomplished. Inbread in such a procedure is an inherent prejudice against the Plaintiff.

SEVENTEENTH: That no previous application to this court has been made by the Plaintiff herein for the relief herein sought.

WHEREFORE, Plaintiff prays that an order be granted herein declaring that Article VIII, Rule 22 as ammended of the Rules and Regulations of the Nassau County Police Department be declared unconstitutional and therefore null, void and invalid; and that the Defendant, LOUIS J. FRANK, be restrained from promulgating and in forcing other similar such rules and regulations which are contrary to the constitutional rights of the members of the Nassau County Police Department; and that the charges and specifications currently being lodged against the Plaintiff herein by the Defendant, for violation of Article VIII, Rule 22 as ammended of the Rules and Regulations of the Nassau County Police Department be dismissed as they violate the constitutional rights of the Plaintiff herein; and that the appointment procedure followed by the Defendant, LOUIS J. FRANK, for appointing a trial commissioner to investigate, judge, and make recommendations with regard to Nassau County Police Officers charged with violating the Rules and Regulations of the Nassau County Police Department, in an attempt to comply with sections 75 and 76 of the Constitution Service Law of the state of New York be declared unconstitutional and therefore null, void and invalid as being contrary to the due process guarantees set forth in the Fifth and Fourteenth Ammendments to the United States Constitution; and for such other and further relief as to

this court may seem just and proper.

Dated: SEPTEMBER 1, 1974

/S/
ROBERT W. MC CUNE

STATE OF NEW YORK)
:ss:
COUNTY OF NASSAU)

ROBERT W. MC CUNE, being duly sworn, deposes and says:

That he is the Plaintiff named herein. That he has read the foregoing affidavit and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

/S/
ROBERT W. MC CUNE

Sworn to before me this
1st day of SEPTEMBER, 1974

RICHARD MARIMAN
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Nassau County
Commission Expires March 30, 1975

/S/

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

-against-

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

71 C 1020

Memorandum of Decision and Order

May 30, 1974

- - - - - - - - - - - - - - - - - - -

In November, 1971, this court denied a preliminary injunction and dismissed a civil rights action brought by the plaintiff. The United States Court of Appeals for the Second Circuit, by order dated August 22, 1973, reversed this court's dismissal of the complaint and remanded the case for trial on the issue of whether the state had ". . . some legitimate state interest reasonably requiring the restriction on the individual." 483 F.2d 1126, 1130 (2d Cir. 1973). The appellate court held that the defendant had ". . . the burden of establishing a genuine public need for the regulation." 483 F.2d at 1131.

EXHIBIT D"

The regulations concerning grooming standards (originally numbered 2/75.0 to 2/75.5 of the rules and regulations of the Police Department, County of Suffolk, New York, dated July 19, 1971, effective August 1, 1971) have been modified and renumbered.[1] The complaint was amended to challenge the grooming standards set forth in Rule 2/2.16 as modified and in effect since November 15, 1973.

---

[1] The regulations concerning hair, sideburns and mustaches are now numbered 2/2.16 subdivisions A, B and C. The regulations concerning beards, goatees and wigs are now subdivisions D and E of 2/2.16. As modified the grooming standards effective November 15, 1973 read as follows:

2/2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2" in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

Defendant suggested that the grooming regulations serve the dual purpose of safety and morale. Defendant's sole witness was Deputy Commissioner Robert C. Rapp. Commissioner Rapp has been the Deputy Police Commissioner since July 21, 1973 and prior to that served as both a patrolman and a sergeant on the New York City police force and as an assistant district attorney of Suffolk County.

Commissioner Rapp testified that long hair presents a safety problem to an officer attempting to make an arrest by placing that officer in a position of being thrown off balance by an offender. The Commissioner demonstrated that a downward force applied to the head through the grasp of "superfluous" hair and transmitted to the forearm in contact with the police officer's back could result in an embarrassing and potentially dangerous upending. The demonstration, favored by a bountiful head of hair supplied by the official court reporter on duty, served to illustrate that pony tails present a hazard to law enforcement officers and are a proper subject for regulation. The remainder of 2/2.16A, however, bears

no relationship to safety but rather relates to hair styling.[12] The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of the hair is not regulated except as it interferes with "the proper wear of any authorized headgear." Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated. In the remaining subdivisions, sideburns, mustaches and wigs are regulated and beards are barred. No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations.

The high morale of police personnel is a matter of grave concern to the department. Proper grooming is an ingredient of the esprit de corps of a good law enforcement organization. The self-esteem generated in the individual and the respect commanded from the public it serves promotes the efficiency of the organization's work. However,

---

[12] The purpose of Section 2/2.16A is stated in the first sentence:

> "Hair will be neat, clean, trimmed, and present a groomed appearance." The remainder of the subdivision relates to specific standards of good grooming.

with the exception of the general requirement that hair, sideburns and mustaches be neatly trimmed, the regulations do not provide standards for proper grooming. Rather, the standards do nothing more than demand uniformity. Uniformity for uniformity's sake does not establish a public need.[3] Defendant offered no proof that beards, goatees, hair styles that extend below the ears or collar, or sideburns that extend below the lowest part of the ear or beyond 2" in width and do not end with a clean-shaven horizontal line affect the morale of the members of the police department or earn the disrespect of the public.

Defendant failed to establish a legitimate state interest requiring these restrictions on the members of the police department. Rule 2/2.16 including its subdivisions is an arbitrary limitation and a purposeless restraint. As such, it is violative of the Due Process Clause of the Fourteenth Amendment and therefore unconstitutional.[4]

---

[3] Commissioner Rapp testified that uniformity was required for identification. It would appear, however, that the uniform (issued by the department) supplies the necessary identification for police work.

[4] Section 2/2.16 fixes grooming standards for male members only. The court does not reach the equal protection claim of the Fourteenth Amendment.

Judgment is granted in favor of the plaintiff and against the defendant declaring Section 2/2.16 of the rules and procedures of the Suffolk County Police Department unconstitutional, void and of no effect and permanently enjoining the defendant from enforcing Section 2/2.16.

Settle judgment in accordance with this memorandum of opinion on two days service (five days by regular mail).

U. S. D. J.

Case Number 4012

A-21

POLICE DEPARYMENY

COUNTY OF NASSAU, N. Y.

Charges and Specifications

Mineola, N. Y. July 3 19 74

To the Commissioner of Police:

I hereby charge Police Officer MC CUNE, Robert W. 1641 Patrol Bure
Rank Surname Given Name Initials Shield No. Command

with VIOLATING (1) ARTICLE VIII, RULE 22 OF THE RULES AND REGULATIONS, POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK.

SPECIFICATIONS:

in that 1. On information and belief, Police Officer Robert W. McCune, Shield Numb 1641, Highway Patrol Bureau, did, at, on or about 1200 hours, May 14, 1974, wear his sideburns extending below the mid part of his ears, in that, said Police Officer McCune's sideburns extended to the lower edge of his ear lobe and then flared out to a width of at least 1 1/4".

Complainant Ralph Gaeta

Ralph Gaeta
Sergeant
Shield Number 107
Highway Patrol Bureau

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

RALPH GAETA, being duly sworn, deposes and says; that he is a Sergeant assigned to th Highway Patrol Bureau and the complainant herein. That he has read the foregoing charg and specifications and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belie and as to those matters, he believes it to be true. That the sources of deponent's information are the books and records kept by the Police Department and the investigation made by the Police Department, County of Nassau, New York.

Ralph Gaeta

Ralph Gaeta

Sworn to before me this
3 day of July 1974

Harry E. Andersen

HARRY E. ANDERSEN
NOTARY PUBLIC, State of New York
No. 30-0063850
Qualified in Nassau County
Commission Expires March 30, 1975

Exhibit "B"

4012

POLICE DEPARTMENT

COUNTY OF NASSAU, N. Y.

Charges and Specifications

with

Notice of Examination

In re Complaint

—vs.—

Mc CUNE, Robert W.
Surname Given Name Initials

Police Officer 1011 Highway Patrol Bureau
Rank Shield No. Command

A-22

FIRST ENDORSEMENT

July 3 19 74

Forward to the Commissioner of Police (through official channels).

I have investigated these charges and recommend:

TRIAL

~~REX~~

Herman J. Raubel
Chief Inspector

NOTE: If recommended for File or Disposition, set forth reasons above.

NOTICE OF EXAMINATION

Mineola, N. Y., July 3 19 74

Time 1000

To Police Officer MC CUNE
RANK SURNAME

TAKE NOTICE that charges have been preferred against you to the Commissioner of Police and that these charges with specifications thereof are as herein set forth.

You are directed to answer in accordance with the Rules and Regulations of the Police Department at the time and place hereinafter designated.

A hearing will be held and the charges examined into by and before the Trial Commissioner at Police Headquarters, Mineola, N. Y.

July 10, 1974 1015
DATE TIME

and will be continued as ordered until concluded

By direction of the
Commissioner of Police

I acknowledge due personal service of the within charges and specifications and notice of examination, this 5 day of July 19 74

1730 hrs.

Witness:

POCN 210 - REV. 12/68

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

RICHARD HARTMAN

Attorney for

Office and Post Office Address

300 Old Country Road

MINEOLA, L. I., N. Y. 11501

A-23

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

RICHARD HARTMAN

Attorney for

Office and Post Office Address

300 Old Country Road

MINEOLA, L. I., N. Y. 11501

To

Index No. Year 19

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ROBERT W. MC CUNE,

Plaintiff,

- against -

LOUIS J. FRA[illegible] Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSA[illegible]

Defendants.

ORDER TO SHOW CAUSE AND AFFADAVIT

RICHARD HARTMAN

Attorney for Plaintiff

Office and Post Office Address, Telephone

300 Old Country Road

MINEOLA, L. I., N. Y. 11501

(516) PI 2-9000

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

COPY RECEIVED THIS [illegible] DAY OF [illegible] 19[illegible]

[illegible]

County Attorney, Nassau County

By: [illegible]

Deputy County Attorney

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

ROBERT W. MC CUNE,

Plaintiff

v.

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon RICHARD HARTMAN, ESQ.

plaintiff's attorney , whose address

Richard Hartman, Esq.
300 Old Country Road
Mineola, New York 11501

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

LEWIS ORGEL /s/
Clerk of Court.

MARK MILLER /s/
Deputy Clerk.

Date: 22 day of September, 1974 [Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
- x

ROBERT W. MC CUNE,

Plaintiff,

-against-

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendant.
- x

COMPLAINT IN ACTION FOR DECLARATORY JUDGMENT

74C 1279

Plaintiff, by his attorney, RICHARD HARTMAN, ESQ., as and for his complaint to obtain a judgment herein declaring the rights and legal relations of the parties to this action in the respect hereinafter set forth, alleges:

FIRST: That at all times hereinafter mentioned, the Plaintiff, ROBERT W. MC CUNE, was and still is employed as a Nassau County Police Officer.

SECOND: That at all times hereinafter mentioned, the Defendant, LOUIS J. FRANK, was and still is the duly appointed Commissioner of Police of the Police Department for the County of Nassau, and as such, is responsible for promulgating and enforcing the Rules and Regulations of the Police Department of the County of Nassau.

THIRD: That at all times hereinafter mentioned, the Defendant, POLICE DEPARTMENT OF THE COUNTY OF NASSAU, STATE OF NEW YORK, was and still is the municipal entity charged with the police function within the County of Nassau, State of New York.

FOURTH: That under Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department (a copy of which is annexed hereto as Plaintiff's Exhibit "A"), there is set forth standards for personal

appearance which dictate the standards for haircuts, sideburns, moustaches, beards and goatees which must be adhered to by all Nassau County Police Officers, and in defiance thereof, subjects said police officers to disciplinary proceedings within the Police Department with the ultimate sanction that one could be dismissed from the Department for violating said standards.

FIFTH: That on or about the 23rd day of April, 1971, the Defendant, LOUIS J. FRANK, issued teletype order number 114, which amended the Rules and Regulations of the Nassau County Police Department so as to provide in Article VIII, Rule 22 that:

> "Personal Appearance - The provisions of Article VIII, Rule 22 of the Rules and Regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to a point below 3/4 of an inch above the bottom of the ear lobe. All provisions relating to moustaches, beards and haircuts shall be strictly conformed with."

SIXTH: That Article VIII, Rule 22 as amended denies to all members of the Nassau County Police Department the basic inalienable right of freedom of choice as to appearance and thus makes said officers second-class citizens by discriminating against them in violation of the Federal and New York State Constitutions as well as in violation of the Federal Civil Rights Act, more formerly known as Title 42 of the United States Code, Section 1983.

SEVENTH: With regard to the above, the Plaintiff, ROBERT W. MC CUNE, states to this court that his appearance meets the criteria recognized by this court in its decision in the case of Duane v. Barry decided by the Honorable Jacob Missler dated May 30, 1974, a copy of which is annexed hereto as Exhibit "B".

EIGHTH: That on or about July 5, 1974 the Plaintiff was personally served with charges and specifications alleges that on or about 1200 hours

on May 14, 1974 Plaintiff did wear his sideburns extending below the mid part of his ears, to wit, the lower edge of his ear lobe and then flared out to a width of at least 1 1/4" thereby violating Article VIII, Rule 22 of the Rules and Regulations of the Police Department of the County of Nassau, State of New York, a copy of said charges and specifications being annexed hereto and marked Exhibit "C".

NINTH: That on July 16, 1974 the Plaintiff entered a not guilty plea before a representative of the Defendant, LOUIS J. FRANK, Police Commissioner and a trial date was set for September 17, 1974.

TENTH: That it is respectfully submitted to this Court that the law to date has long since recognized that a municipal employer cannot infringe upon an employee's fundamental constitutional rights as a condition of employment without said employer evidencing an overriding public need to justify said infringement.

ELEVENTH: For Defendants to require that Plaintiff refrain from having long sideburns, a moustache below his lips or a beard or goatee as a condition of his employment in accordance with Article VIII, Rule 22 as amended, of the Rules and Regulations of the Nassau County Police Department, deprives the Plaintiff of his personal freedom of choice with regard to his appearance as well as violates his constitutional guarantees set forth in the First Amendment, the Ninth Amendment, the Equal Protection Clause of the Fourteenth Amendment and the Due Process Guarantees of the Fifth and Fourteenth Amendments of the United States Constitution as well as being in direct violation of Title 42 of the United States Code, Section 1983, more commonly known as the Federal Civil Rights Statute. For Plaintiff to meet

the personal grooming requirements of a police officer, to wit, to be of a neat and clean appearance while on duty, does not require said police officer to meet the restrictive standards set forth in Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department.

TWELFTH: That the present grooming standards for men in our society set forth hair lengths and hair growths which are contrary to Article VIII, Rule 22 as amended, and to deny the Plaintiff herein, the right to determine his personal appearance in accordance with current grooming standards, interferes with his personal life not only on duty but also off duty in violation of the aforementioned constitutional guarantees.

THIRTEENTH: That Plaintiff, in addition to claiming that his constitutional guarantees have been violated as a result of the existence of Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department, further alleges that the Due Process Guarantees of the Fifth and Fourteenth Amendments to the United States Constitution have been violated by the procedure followed by the Defendant, LOUIS J. FRANK, in his attempt to comply with Sections 75 and 76 of the Civil Service Law of the State of New York (the text of which is set forth herein as Exhibit "D"), wherein, said Defendant, LOUIS J. FRANK, appoints from his ranks, a trial commissioner to investigate, judge and make recommendations to him as to the guilt or innocence of the Plaintiff herein as to alleged violations of the Rules and Regulations of the Nassau County Police Department.

FOURTEENTH: For the Defendant, LOUIS J. FRANK, to appoint a trial commissioner from the ranks of the Nassau County Police Department, when said trial commissioner is directly beholden to said Defendant, LOUIS J. FRANK, as to promotion, placement and appointment, points up the obvious that an impartial trial conducted by said trial commissioner with regard to the Plaintiff herein cannot be accomplished. Imbread in such a procedure is an inherent prejudice against the Plaintiff in violation of the Due Process Guarantees of the Fifth and Fourteenth Amendments of the United States Constitution.

FIFTEENTH: That no previous application has been made by Plaintiff to this Court for the relief sought herein.

WHEREFORE, Plaintiff demands that the Court declare that the rights and other legal relations of the parties herein are as follows:

1. That Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department be declared unconstitutional and therefore, null, void and invalid; and

2. That the Defendant, LOUIS J. FRANK, Commissioner of Police, Nassau County, be restrained from promulgating and enforcing other similar such rules and regulations which are contrary to the constitutional rights of the members of said Police Department; and

3. That the charges and specification currently being lodged against the Plaintiff herein by the Defendant, for violation of Article VIII, Rule 22 as amended of the Rules and Regulations of the Nassau County Police Department be dismissed as violation of the constitutional rights of the Plaintiff; and

4. That the appointment procedure followed by the Defendant in an attempt to follow Sections 75 and 76 of the Civil Service Law of the State of New York, wherein Defendant, LOUIS J. FRANK, as Commissioner of Police appoints from his ranks a trial commissioner to investigate, judge, and make recommendations to Defendant, Police Commissioner, as to the guilt or innocence of the Plaintiff herein as to the alleged violation of the Rules and Regulations of the Nassau County Police Department is unconstitutional and therefore null, void and invalid as it is contrary to the Plaintiff's constitutional guarantees of due process; and

5. For such other and further relief as to this Court may seem just and proper.

DATED: Mineola, New York
September 4, 1974

RICHARD HARTMAN
Attorney for Plaintiff
Office and P. O. Address
300 Old Country Road
Mineola, New York 11501

STATE OF NEW YORK)
COUNTY OF NASSAU) :ss:

ROBERT W. MC CUNE, being duly sworn, deposes and says: deponent is the Plaintiff in the within action, deponent has read the foregoing Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

/S/
ROBERT W. MC CUNE

Sworn to before me this
5th day of September, 1974.
/S/
ALLEN R. MORGANSTERN
NOTARY PUBLIC, State of New York
No. 30-8016965
Qualified in Nassau County
Commission Expires March 30, 1976

"Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by their Commanding Officer due to special assignment:

Haircuts - Hair shall be neatly cut and trimmed at all times while on duty. Hair styles shall be conservative and not excessive in length.

Sideburns - Sideburns shall not extend below the mid part of the ear and shall be trimmed level.

Moustaches- A short and neatly trimmed moustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

Beards
Goatees - Male personnel shall be clean shaven when reporting for duty. Beards or goatees shall not be worn while on duty. A growth of whiskers shall be permitted while on duty for medical reasons only when approved by the Chief Surgeon."

EXHIBIT "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -

THOMAS DWEN, as President of the Suffolk County Patrolmen's Benevolent Association and THOMAS DWEN, individually,

Plaintiff,

-against-

JOHN L. BARRY, Commissioner of the Suffolk County Police Department,

Defendant.

- - - - - - - - - - - - - - - - - - -

71 C 1020

Memorandum of Decision and Order

May 30, 1974

In November, 1971, this court denied a preliminary injunction and dismissed a civil rights action brought by the plaintiff. The United States Court of Appeals for the Second Circuit, by order dated August 22, 1973, reversed this court's dismissal of the complaint and remanded the case for trial on the issue of whether the state had ". . . some legitimate state interest reasonably requiring the restriction on the individual." 483 F.2d 1126, 1130 (2d Cir. 1973). The appellate court held that the defendant had ". . . the burden of establishing a genuine public need for the regulation." 483 F.2d at 1131.

EXHIBIT "B"

The regulations concerning grooming standards (originally numbered 2/75.0 to 2/75.5 of the rules and regulations of the Police Department, County of Suffolk, New York, dated July 19, 1971, effective August 1, 1971) have been modified and renumbered.[1] The complaint was amended to challenge the grooming standards set forth in Rule 2/2.16 as modified and in effect since November 15, 1973.

---

[1] The regulations concerning hair, sideburns and mustaches are now numbered 2/2.16 subdivisions A, B and C. The regulations concerning beards, goatees and wigs are now subdivisions D and E of 2/2.16. As modified the grooming standards effective November 15, 1973 read as follows:

2/2.16 Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2" in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

C. A neatly trimmed mustache may be worn.

Defendant suggested that the grooming regulations serve the dual purpose of safety and morale. Defendant's sole witness was Deputy Commissioner Robert C. Rapp. Commissioner Rapp has been the Deputy Police Commissioner since July 21, 1973 and prior to that served as both a patrolman and a sergeant on the New York City police force and as an assistant district attorney of Suffolk County.

Commissioner Rapp testified that long hair presents a safety problem to an officer attempting to make an arrest by placing that officer in a position of being thrown off balance by an offender. The Commissioner demonstrated that a downward force applied to the head through the grasp of "superfluous" hair and transmitted to the forearm in contact with the police officer's back could result in an embarrassing and potentially dangerous upending. The demonstration, favored by a bountiful head of hair supplied by the official court reporter on duty, served to illustrate that pony tails pr ent a hazard to law enforcement officers and are a proper subject for regulation. The remainder of 2/2.16A, however, bears

no relationship to safety but rather relates to hair styling.[2] The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of the hair is not regulated except as it interferes with "the proper wear of any authorized headgear." Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated. In the remaining subdivisions, sideburns, mustaches and wigs are regulated and beards are barred. No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations.

The high morale of police personnel is a matter of grave concern to the department. Proper grooming is an ingredient of the esprit de corps of a good law enforcement organization. The self-esteem generated in the individual and the respect commanded from the public it serves promotes the efficiency of the organization's work. However,

---

[2] The purpose of Section 2/2.16A is stated in the first sentence:

> "Hair will be neat, clean, trimmed, and present a groomed appearance." The remainder of the subdivision relates to specific standards of good grooming.

with the exception of the general requirement that hair, sideburns and mustaches be neatly trimmed, the regulations do not provide standards for proper grooming. Rather, the standards do nothing more than demand uniformity. Uniformity for uniformity's sake does not establish a public need.[3] Defendant offered no proof that beards, goatees, hair styles that extend below the ears or collar, or sideburns that extend below the lowest part of the ear or beyond 2" in width and do not end with a clean-shaven horizontal line affect the morale of the members of the police department or earn the disrespect of the public.

Defendant failed to establish a legitimate state interest requiring these restrictions on the members of the police department. Rule 2/2.16 including its subdivisions is an arbitrary limitation and a purposeless restraint. As such, it is violative of the Due Process Clause of the Fourteenth Amendment and therefore unconstitutional.[4]

---

[3] Commissioner Rapp testified that uniformity was required for identification. It would appear, however, that the uniform (issued by the department) supplies the necessary identification for police work.

[4] Section 2/2.16 fixes grooming standards for male members only. The court does not reach the equal protection claim of the Fourteenth Amendment.

Judgment is granted in favor of the plaintiff and against the defendant declaring Section 2/2.16 of the rules and procedures of the Suffolk County Police Department unconstitutional, void and of no effect and permanently enjoining the defendant from enforcing Section 2/2.16.

Settle judgment in accordance with this memorandum of opinion on two days service (five days by regular mail).

U. S. D. J.

Case Number 4014

POLICE DEPARTMENT
COUNTY OF NASSAU, N. Y.

Charges and Specifications

Mineola, N. Y. July 3 1974

To the Commissioner of Police:

I hereby charge Police Officer (Rank) MC CUNE, (Surname) Robert (Given Name) W. (Initials) 1641 (Shield No.) Highway Patrol Bureau (Command)

with: VIOLATING (1) ARTICLE VIII, RULE 22 OF THE RULES AND REGULATIONS, POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK.

SPECIFICATIONS:

In that 1. On information and belief, Police Officer Robert W. McCune, Shield Number 1641, Highway Patrol Bureau, did, at, on or about 1200 hours, May 14, 1974, wear his sideburns extending below the mid part of his ears, in that, said Police Officer McCune's sideburns extended to the lower edge of his ear lobe and then flared out to a width of at least 1 1/4".

Complainant Ralph Gaeta

Ralph Gaeta
Sergeant
Shield Number 107
Highway Patrol Bureau

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

RALPH GAETA, being duly sworn, deposes and says; that he is a Sergeant assigned to the Highway Patrol Bureau and the complainant herein. That he has read the foregoing charges and specifications and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true. That the sources of deponent's information are the books and records kept by the Police Department and the investigation made by the Police Department, County of Nassau, New York.

Ralph Gaeta

Ralph Gaeta

Sworn to before me this
3 day of July 1974.

Harry E. Andersen

HARRY E. ANDERSEN
NOTARY PUBLIC, State of New York
No. 30-0063850
Qualified in Nassau County
Commission Expires March 30, 1975

EXHIBIT "C"

4012

POLICE DEPARTMENT

COUNTY OF NASSAU, N. Y.

Charges and Specifications

with

Notice of Examination

In re Complaint

—vs.—

Mc CUNE,	Robert	W.
Surname	Given Name	Initials
Police Officer	1641	Highway Patrol Bureau
Rank	Shield No.	Command

FIRST ENDORSEMENT

July 3 19 74

Forward to the Commissioner of Police (through official channels).

I have investigated these charges and recommend:

TRIAL

~~XXXX~~

Herman J. Knauel

Chief Inspector

NOTE: If recommended for File or Disposition, set forth reasons above.

NOTICE OF EXAMINATION

Mineola, N. Y., July 3, 19 74

Time 1000

To Police Officer MC CUNE

RANK SURNAME

TAKE NOTICE that charges have been preferred against you to the Commissioner of Police and that these charges with specifications thereof are as herein set forth.

You are directed to answer in accordance with the Rules and Regulations of the Police Department at the time and place hereinafter designated.

A hearing will be held and the charges examined into by and before the Trial Commissioner at Police Headquarters, Mineola, N. Y.

July 16, 1974 1015

DATE TIME

and will be continued as ordered until concluded.

By direction of the
Commissioner of Police

I acknowledge due personal service of the within charges and specifications and notice of examination, this 5 day of July, 19 74

at 1730 M.

Witness: Sergeant Badge No. 286

FDCN 210 - REV. 12/68

A-39

TITLE B—REMOVAL AND OTHER DISCIPLINARY PROCEEDINGS

Sec.
75. Removal and other disciplinary action.
76. Appeals from determinations in disciplinary proceedings.
77. Compensation of officers and employees reinstated by court order.

§ 75. Removal and other disciplinary action

1. Removal and other disciplinary action. A person described in paragraph (a), or paragraph (b), or paragraph (c), or paragraph (d) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who is an honorable [1] discharged member of the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer fireman as defined in the general municipal law,[2] except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee in the state service holding a position in the non-competitive class other than a position designated in the rules of the state civil service commission as confidential or requiring the performance of functions influencing policy, who since his last entry into state service has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has complet-

EXHIBIT "D"

ed at least three years of continuous service in such position in the non-competitive class.

2. Procedure. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such office or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of compensation which he may have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position.

A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than three years after the occurrence of the alleged incompetency or misconduct complained of and described in the charges provided, however, that such limitation shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

L.1958, c. 790, § 1; amended L.1960, c. 312, § 1; L.1962, c. 645, § 1; L.1965, c. 738, § 1; L.1970, c. 942, § 1.

[1] So in original. Probably should read "honorably."

[2] General Municipal Law § 200.

Historical Note

1970 Amendment. Subd. 1. L.1970, c. 942, § 1, eff. Oct. 1, 1970, inserted reference to par. (d) in opening paragraph, and added par. (d).

1965 Amendment. Subd. 1. L.1965, c. 738, § 1, eff. Mar. 30, 1967, added par. (c).

1962 Amendment. Subd. 4. L.1962, c. 645, § 1, eff. July 1, 1962, substituted "three years" for "five years."

1960 Amendment. Subd. 2. L.1960, c. 312, § 1, eff. Mar. 29, 1960, in sentences beginning "The hearing upon" and "In case a", substituted reference to "person" instead of "employee."

Derivation. Subd. 1. Civil Service Law of 1909, c. 15, § 22, subds. 1, 2, and 4, which section was repealed by L.1958, c. 790, § 1. Said subd. 1 of former section 22, was amended by L.1910, c. 264; L.1920, c. 833; L.1924, c. 612; L.1930, c. 214; L.1935, c. 639; L.1937, c. 774; L.1940, cc. 315, 572; L.1941, cc. 111, 853; L.1944, c. 42, § 1; L.1945, c. 46; L.1955, c. 175; L.1957, c. 144, § 2. Said subd. 2 was amended by L.1924, c. 612; L.1941, c. 853; L.1944, c. 379, § 1; L.1953, c. 19, § 16; L.1955, c. 596, § 1; L.1957, c. 350, § 1. Said subd. 4 was added by L.1944, c. 379, § 2. Said section 22 derived from Civil Service Law of 1899, c. 370, § 21, as amended by L.1902, c. 270; L.1904, c. 697; originally revised from L.1888, c. 119, § 1, as amended by L.1890, c. 67; L.1892, c. 577; L.1898, c. 184; L.1884, c. 312, § 1, as amended by L.1887, c. 464; L.1894, c. 716; L.1896, c. 821.

Subds. 2 and 3. Civil Service Law of 1909, c. 15, § 22, subd. 2; amended by L.1924, c. 612; L.1941, c. 853; L.1944, c. 379, § 1; L.1953, c. 19, § 16; L.1955, c. 596, § 1; L.1957, c. 350, § 1, and repealed by L.1958, c. 790, § 1. For derivation of said section 22, see note under subd. 1.

Subd. 4. Civil Service Law of 1909, c. 15, § 22, subd. 3-a, added by L.1950, c. 412, and repealed by L.1958, c. 790, § 1. For derivation of said section 22, see note under subd. 1.

Veterans. A note appended to L.1940, c. 572, provided: "This amendment [L.1940, c. 572] extends the meaning of the word 'veterans' as used in (former) Section 22(1) of the Civil Service Law to include members of the Army and Navy Nurse Corps (female). The Court's suggestion for a clarification of Legislative intent is thereby adopted. See Matter of Hutton v. Heitzmann, (171 Misc. 1023)."

Disciplinary Proceedings, Agreements Affecting. See note under section 200.

§ 76. Appeals from determinations in disci[illegible]ary proceedings

1. Appeals. Any officer or employee believing himself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine, imposed pursuant to the provisions of section seventy-five of this chapter, may appeal from such determination either by an application to the state or municipal commission having jurisdiction, or by an application to the court in accordance with the provisions of article seventy-eight of the civil practice law and rules. If such person elects to appeal to such civil service commission, he

EXHIBIT "D"

shall file such appeal in writing within twenty days after service of written notice of the determination to be reviewed, such written notice to be delivered personally or by registered mail to the last known address of such person and when notice is given by registered mail, such person shall be allowed an additional three days in which to file such appeal.

2. Procedure on appeal. Where appeal is taken to the state or municipal commission having jurisdiction, such commission shall review the record of the disciplinary proceeding and the transcript of the hearing, and shall determine such appeal on the basis of such record and transcript and such oral or written argument as the commission may determine. The commission may direct that such appeal shall be heard by one or more members of the commission or by a person or persons designated by the commission to hear such appeal on its behalf, who shall report thereon with recommendations to the commission. Upon such appeal the commission shall permit the employee to be represented by counsel.

3. Determination on appeal. The determination appealed from may be affirmed, reversed, or modified, and the state or municipal commission having jurisdiction may, in its discretion, direct the reinstatement of the appellant or permit the transfer of such appellant to a vacancy in a similar position in another division or department, or direct that his name be placed upon a preferred list pursuant to section eighty-one of this chapter. In the event that a transfer is not effected, the commission is empowered to direct the reinstatement of such officer or employee. An employee reinstated pursuant to this subdivision shall receive the salary or compensation he would have been entitled by law to have received in his position for the period of removal including any prior period of suspension without pay, less the amount of compensation which he may have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. The decision of such civil service commission shall be final and conclusive, and not subject to further review in any court.

4. Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division. Such sections may be supplemented, modified or replaced by agreements negotiated between the state and an employee organization pursuant

to article fourteen of this chapter. Where such sections are so supplemented, modified or replaced, any employee against whom charges have been preferred prior to the effective date of such supplementation, modification or replacement shall continue to be subject to the provisions of such sections as in effect on the date such charges were preferred.

L.1958, c. 790, § 1; amended L.1962, c. 310, § 68; L.1964, c. 626, § 1; L.1969, c. 721, § 1; L.1970, c. 458, § 1; L.1972, c. 283, § 1.

Historical Note

1972 Amendment. Subd. 4. L.1972, c. 283, § 1, eff. May 15, 1972, in sentence beginning "Such sections" inserted "or replaced", and added provision relating to employee remaining subject to this section and section 75 against whom charges are preferred prior to effective date of supplementation, modification or replacement of said sections.

1970 Amendment. Subd. 4. L.1970, c. 458, § 1, eff. May 5, 1970, added sentence beginning "Such sections may."

1969 Amendment. Subd. 1. L.1969, c. 721, § 1, eff. on 30th day after May 22, 1969, in sentence beginning "If such person", substituted "service of" for "receiving", and inserted provision for delivery of notice personally or by registered mail and for three additional days for filing of appeal.

1964 Amendment. Subd. 1. L.1964, c. 626, § 1, eff. Apr. 16, 1964, omitted "for a period exceeding ten days" and "of over fifty dollars."

1962 Amendment. Subd. 1. L.1962, c. 310, § 68, eff. Sept. 1, 1963, substituted reference to CPLR for reference to CPA.

Derivation. Civil Service Law of 1909, c. 15, § 22, subd. 3, added by L.1941, c. 853, and amended by L.1942, c. 216, § 2; L.1945, c. 607; L.1947, c. 125; L.1952, c. 398; L.1955, c. 596, § 2; L.1957, c. 250, § 2, and repealed by L.1958, c. 790, § 1. Said section 22 derived from Civil Service Law of 1899, c. 370, § 21, as amended by L.1902, c. 270; L.1904, c. 697; originally revised from L.1888, c. 119, § 1, as amended by L.1890, c. 67; L.1892, c. 577; L.1898, c. 184; L.1884, c. 312, § 1, as amended by L.1887, c. 464; L.1894, c. 716; L.1896, c. 821.

Memorandum on 1958 Revision. "Under the present law the right to appeal to the civil service commission having jurisdiction from a determination in a disciplinary proceeding is granted only to State employees, city employees, and employees in the county offices within the City of New York. An employee of a county or other civil division in such county may appeal to the county civil service commission only if the board of supervisors has elected to permit such appeals. School district employees have no right to appeal except to the courts.

"The new law [subd. 1 of this section] would give all employees the right of appeal to the civil service commission having jurisdiction from a determination in a disciplinary proceeding."

Disciplinary Proceedings, Agreements Affecting. See note under section 200.

Cross References

Proceedings against body or officer, generally, see CPLR 7801 et seq.
Right of appeal for redress of grievances on account of employment in civil service not to be denied, see Civil Rights Law § 15.

LS:rb

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
----------X

ROBERT W. MC CUNE,

Plaintiff,

-against-

Civil Action File
No. 74C 1279

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendant.

----------X

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

LOUIS SCHELLY, being duly sworn, deposes and says:

1. I am a Senior Deputy County Attorney of Nassau County, associated with JOHN F. O'MALLEY, County Attorney of Nassau County, attorney for the defendants in the above-entitled action.

2. This affidavit is submitted in opposition to the order to show cause obtained by the plaintiff in this action. In the said order to show cause, the plaintiff is asking the Court to declare that Article VIII, Rule 22, as amended, of the Rules and Regulations of the Nassau County Police Department

(hereinafter referred to as "CONDUCT STANDARDS") be declared unconstitutional and, therefore, null, void and invalid; that the defendant, LOUIS J. FRANK, Commissioner of Police, County of Nassau, be restrained from promulgating and enforcing other similar such rules and regulations which are contrary to the constitutional rights of the members of the said Police Department; and that the charges and specifications currently pending against the plaintiff for violation of said rule 22 be dismissed as a violation of his constitutional rights, and that the appointment procedure followed by the defendant in designating a Trial Commissioner pursuant to the provisions of Section 75 and 76 of the Civil Service Law of the State of New York, be declared unconstitutional.

3. As is set forth in the complaint and the supporting affidavit of the plaintiff, charges and specifications were served upon the plaintiff herein for violation of the rule and regulation, which is the subject of this motion. A copy of those charges and specifications are attached to the plaintiff's moving papers and identified as Exhibit "B". In accordance with the provisions of Section 75 of the Civil Service Law of the State of New York, a Trial Commissioner was appointed to hear those charges by the defendant, LOUIS J. FRANK, in his

capacity as Commissioner of Police. In addition to attacking the constitutionality of Article VIII, Rule 22, the plaintiff is also challenging the appointment of a Trial Commissioner by claiming that the provisions of Section 75 of the Civil Service Law of the State of New York is unconstitutional. The present application has been brought on by Order to Show Cause.

4. The within Order to Show Cause, which was signed by United States District Court Judge LEO F. RAYFIEL on September 5, 1974, contains a preliminary injunction enjoining the defendants from prosecuting the plaintiff in the disciplinary proceeding, and further enjoins the enforcement of Article VIII, Rule 22. Your deponent is reliably informed by a member of the Office of the County Attorney of Nassau County, that a telephone call was received from the office of the attorney for the plaintiff on September 3, 1974, that the within application was to be made on September 5, 1974, for a preliminary injunction. Your deponent is further advised that on September 4, 1974, a further telephone call was received from the office of the attorney of the plaintiff that we were not to be concerned about such application. The second telephone call was indicative of the fact that no such application was being made, for which reason, there was no representation from the Office of

the County Attorney in the Court House on September 5, 1974 when such preliminary injunction was granted and same was therefore granted without notice to the defendants.

5. The subject matter regarding the constitutionality of Article VIII, Rule 22, as amended, of the Rules and Regulations of the Nassau County Police Department, was previously adjudicated on the very same issues in the Courts of the State of New York. The plaintiff in his WHEREFORE CLAUSE, in his Order to Show Cause, prays for an order whereby the defendant, LOUIS J. FRANK, be restrained from promulgating and enforcing the GROOMING STANDARDS rules which he states are contrary to the constitutional rights of the members of the Nassau County Police Department. In Paragraph 2 of his WHEREFORE CLAUSE in his complaint, he also requests the same relief on behalf of the members of the Police Department. In other words, while he is bringing this suit in his individual name, he is actually seeking a determination on behalf of the members of the Nassau County Police Department, pursuant to which the GROOMING STANDARDS regulations will be declared unconstitutional.

6. A similar suit was instituted by Daniel Greenwald, individually, and as President of the Nassau County Patrolmen's Benevolent Association, at a time when the said Daniel Greenwald

was such president. Such suit was commenced by the said Daniel Greenwald in the Supreme Court of the State of New York, County of Nassau. In that suit, the plaintiff claimed that Article VIII Rul 22 of the Rules and Regulations of the Nassau County Police Department, which is the same rule under attack in this suit, was unconstitutional. Said suit was brought pursuant to the provisions of Article 78 of the New York State Civil Practice Law and Rules. On motion of the defendants, who are the same defendants in this suit, the petition of Daniel Greenwald was dismissed on June 29, 1972 (70 Misc. 2d 632). The determination of the Justice of the Supreme Court in dismissing the petition of Daniel Greenwald, as aforementioned, was appealed to the Appellate Division of the New York State Supreme Court, Second Department. The Appellate Division modified the determination of the New York State Supreme Court by declaring that Rule 22 of Article VIII of the Rules and Regulations of the Nassau County Police Department was valid and as so modified, affirmed the determination made by the New York State Supreme Court (40 A.D. 2d 717, Second Dept., 1972). The determination made by the Appellate Division of the New York State Supreme Court was unanimously affirmed by the New York State Court of Appeals on May 30, 1973 (32 N.Y. 2d 862).

7. A reading of the decisions rendered by the New York State Supreme Court, Appellate Division of the New York State Supreme Court and the New York State Court of Appeals will clearly indicate that the State Courts were competent to decide the question raised by the plaintiffs with regard to the alleged unconstitutionality of the "GROOMING STANDARDS" contained in the Rules and Regulations of the Nassau County Police Department. The said constitutionality of said "GROOMING STANDARDS" was fully covered by the State Courts.

8. On December 20, 1973, CLIFF W. SCHMIDT, individually and on behalf of those others similarly situated, commenced a proceeding against the defendants in this suit, in the Supreme Court of the State of New York, County of Nassau, by order to show cause wherein he asked the Court to annul and cancel Rule 22, Article VIII of the Police Department Rules and Regulations and its amendments, claiming, among other things, that said Rule 22, Article VIII, was unconstitutional. That proceeding was also commenced by the petitioner pursuant to the provisions of Article 78 of the New York State Civil Practice Law and Rules, and covered the same subject matter as is contained in the within order to show cause and supporting affidavit.

9. On February 13, 1974, MR. JUSTICE PAUL KELLY of

the New York State Supreme Court before whom the said Article 78 proceeding was heard, rendered a decision dismissing the petition. A copy of the order with notice of entry was duly served upon the attorney for the petitioner in that proceeding and there has not yet been served any notice of appeal from said order dismissing the petition. The question of constitutionality of the "GROOMING STANDARDS" under attack herein and under attack in that proceeding was fully covered by MR. JUSTICE KELLY.

10. Thereafter, on February 25, 1974, an action was commenced by CLIFF W. SCHMIDT individually, and as President of the Nassau County Patrolmen's Benevolent Association and the NASSAU COUNTY PATROLMEN'S BENEVOLENT ASSOCIATION against the same defendants in this Court (Civil Action File No. 74C 316), in which action he asked the Court to declare the GROOMING STANDARDS regulations of the Nassau County Police Department to be unconstitutional. Under date of April 23, 1974, the aforementioned action of CLIFF W. SCHMIDT was dismissed. A copy of the memorandum and order of Judge COSTANTINO is attached hereto and made part hereof.

11. At the time of the commencement of the action by Daniel Greenwald, who was then President of the Nassau County Patrolmen"s Benevolent Association, in the Courts of the State

of New York, and at the time of the commencement of the action by Cliff W. Schmidt, in the New York State Supreme Court and in the United States District Court for the Eastern District of New York, plaintiff was a member of the Nassau County Police Department and he was also a delegate of the Nassau County Patrolmen's Benevolent Association. The Greenwald action, the Schmidt action and the present action were all commenced by the same attorney who represents the Nassau County Patrolmen's Benevolent Association. The plaintiff, while he is suing in his individual capacity, is seeking the same relief which was denied in the previous law suits, and he is seeking such similar relief on behalf of all of the members of the Nassau County Police Department in the same manner that the previous litigants sought such relief on behalf of all of the members of the Nassau County Police Department.

12. It will be shown in the Memorandum of Law, which will be served with this affidavit, that the doctrine of Res Judicata or collateral estoppel precludes the present plaintiff from continuing with this litigation since the previous determinations prevent the parties to an action and those in privity with them from subsequently re-litigating those questions that

were previously decided. The term "privity" includes those whose interests were represented by the previous parties to the previous actions and there can be no doubt but that the plaintiff, as a delegate of the Nassau County Patrolmen's Benevolent Association, and a member of the same Association, was in privity with the previous plaintiffs. The only purpose attempted by this plaintiff in commencing this proceeding by Order to Show Cause is his attempt to have this Court re-litigate his alleged Federal claim, which was presented to and decided by two Justices of the New York State Supreme Court, by the Appellate Division of the New York State Supreme Court, by the New York State Court of Appeals, and by a Judge of the United States District Court. Plaintiff has no right to seek such direct review of the State Court decisions in this Court. To permit this plaintiff to do so would also give to more than 3,200 members of the Nassau County Police Patrolmen's Benevolent Association individual rights to commence more than 3,200 suits in this Court on the same subject matter. The judgments previously rendered on the GROOMING STANDARDS subject matter, conclusively determined the rights of the plaintiff, and this Court does not have the right of Appellate Jurisdiction in this matter. The plaintiff is now asking this Court to usurp the function of

the Supreme Court of the United States, which is the only Court to which the previous litigants could have proceeded in order to determine the constitutionality of the GROOMING STANDARDS regulation after such regulation was found to be constitutional by the Courts of the State of New York. The entire question will be fully treated in the accompanying Memorandum of Law.

13. Section 75 of the Civil Service Law of the State of New York, permits a hearing to be held by the Officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body, in writing, for that purpose. It is, therefore, apparent that the New York State Legislature, in enacting said Section 75 of the Civil Service Law of the State of New York, provided for a hearing by the officer having the power to remove the person against whom the charges were preferred or one of his deputies. The charges could, therefore, have been heard by LOUIS J. FRANK since he, as Commissioner of Police, has the power to remove the plaintiff or in the alternative, the said LOUIS J. FRANK had the authority to designate one of his deputies, upon the completion of the disciplinary proceeding who must report to the Police Commissioner in writing, as to his findings. The fact that the Trial Commissioner is

allegedly beholden to the Police Commissioner as to promotion, does not make his appointment as such Trial Commissioner an unconstitutional act nor does it make the provisions of Section 75 of the Civil Service Law of the State of New York, which provides for such appointment of a Trial Commissioner unconstitutional.

WHEREFORE, your deponent respectfully requests that the motion of the plaintiff be denied, that the stay be vacated, and that the complaint of the plaintiff be dismissed and that the defendants have such other and further relief as to the Court may seem just and proper.

Sworn to before me this
6th day of September, 1974.

S/
Louis Schultz

Notary

NOTARY PUBLIC, State of New York
No. 30-1696100
Qualified in Nassau County
Term Expires March 30, 19 75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLIFF W. SCHMIDT, individually and as President of the Nassau County Patrolmen's Benevolent Association and the NASSAU COUNTY PATROLMEN'S BENEVOLENT ASSOCIATION,	:	74-C-314
Plaintiffs,	:	
- against -	:	MEMORANDUM and ORDER
LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,	:	APR 23 1974
Defendants.	:	

Appearances:

Richard Hartman, Esq., 300 Old Country Road, Mineola, New York, for plaintiffs

Hon. Joseph Jaspan, County Attorney of Nassau County, Nassau County Executive Building, Mineola, New York, by Louis Schultz, Deputy County Attorney, for defendants

COSTANTINO, D.J.

FPI MI—8-3-68 72M-1551

In this action the plaintiffs seek declaratory and injunctive relief to prevent the defendant Nassau County Police Department from enforcing Rule 22 of Article VIII of the Rules and Regulations of the Nassau County Police Department. The rule establishes grooming standards for haircuts, sideburns, mustaches, beards and goatees.

The threshold issue to be decided is whether prior state adjudication is res judicata of the present issues. In 1972 the former president of the Nassau County Patrolmen's Benevolent Association commenced a suit in Supreme Court, Nassau County to have Rule 22 declared unconstitutional. The action was dismissed. Matter of Greenwald v. Frank, 70 Misc.2d 632, 334 N.Y.S.2d 680, (Sup.Ct. 1972) (McCaffrey,J.). The Appellate Division, Second Department modified the trial court decision by ordering that Rule 22 be adjudged valid. Matter of Greenwald v. Frank, 40 App. Div.2d 717, 337 N.Y.S.2d 225 (2d Dep't 1972). The Appellate Division reasoned that

> The rationale of the modest regulation in question, concerning personal appearance, setting forth rules as to haircuts, sideburns, mustaches and beards, is that there

> should be neatness and discipline in a large quasi-military organization such as the Nassau County Police Department so that the general public will have respect for the members of the department. In our opinion this regulation does not raise issues which rise to the dignity of constitutional questions.

Id. at App. Div.2d 717, N.Y.S.2d 226. The New York Court of Appeals unanimously affirmed the determination of the Appellate Division. Matter of Greenwald v. Frank, 32 N.Y.2d 862, 299 N.E.2d 895, 346 N.Y.S.2d 529 (1973).

A similar case was subsequently commenced by the present president of the Nassau County Patrolmen's Benevolent Association in the Supreme Court, Nassau County. It covered the same subject matter - once again attacking the constitutionality of Rule 22. On February 13, 1974, Justice Paul Kelly applying the doctrine of stare decisis dismissed the action. Plaintiffs then initiated the present federal action.

Apparently the impetus for this suit was the recent case of Dwen v. Barry, 483 F.2d 1126 (2d Cir. 1973), wherein the Second Circuit rejected an analogy of a police officer to a soldier, and held that a substantial con-

stitutional issue was raised by the regulation of a policeman's hair length. Unfortunately the disparity that exists between the Greenwald and Dwen cases cannot be resolved in this action. Since the action was commenced in the New York courts where all the issues now raised were fully considered and since an adverse decision was rendered on the merits, the plaintiffs are barred from continuing this action.

It is well settled that in cases arising under the United States Constitution state courts enjoy concurrent jurisdiction with federal courts. Claflin v. Houseman, 93 U.S. 130 (1876). See also Charles Dowd Box Co., Inc. v. Courtney, 368 U.S. 502, 507-08 (1962). Therefore once the matter is conclusively litigated in a state court between the same parties it cannot be relitigated in a federal court. Johnson v. Department Of Water And Power, 450 F.2d 294 (9th Cir. 1971); Taylor v. New York City Transit Authority, 433 F.2d 665, 668 (2d Cir. 1970); Murray v. Oswald, 333 F.Supp. 490 (S.D.N.Y. 1971). See also Whitner v. Davis, 410 F.2d 24 (9th Cir. 1969). The fact that a party may change the nomenclature of his suit when he comes to a federal court has no import. Johnson v. Department Of Water

And Power, supra; Howe v. Brouse, 422 F.2d 347 (8th Cir. 1970); Murray v. Oswald, supra. The plaintiffs are therefore without remedy in this civil action.

Accordingly the action is dismissed.

The foregoing opinion shall constitute the court's findings of fact and conclusions of law, as required by Fed.R.Civ.P. 52(a).

U.S.D.J.

Sir:

Please take notice that the within is a copy of a n Order

this day duly made and entered herein in th e office of the Clerk of United States District Court, Eastern District

Dated: April 23, 1974

Yours, etc.,

JOSEPH JASPAN
County Attorney of Nassau County
Attorney for Defendants
Office and Post Office Address
Nassau County Executive Building
Mineola, New York 11501

To: Richard Hartman, Esq.
Attorney for: Plaintiffs
300 Old Country Road
Mineola, New York 11501

Sir:

Please take notice that an order of which the within is a true copy will be presented for settlement and entry herein to Mr. Justice

at

of this Court at

on the day of

at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated:

Yours, etc.,

County Attorney of Nassau County
Attorney for
Office and Post Office Address
Nassau County Executive Building
Mineola, New York 11501

To:
Attorney for:

Index No. 74C 314

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLIFF W. SCHMIDT, individually and as President of the Nassau County Patrolmen's Benevolent Association and the NASSAU COUNTY PATROLMEN'S BENEVOLENT ASSOCIATION,

Plaintiffs,

-against-

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

ORDER WITH NOTICE OF ENTRY

JOSEPH JASPAN
County Attorney of Nassau County
Attorney for Defendants

Office and Post Office Address
Nassau County Executive Building
Mineola, New York 11501

To:

Attorney for:

Due and proper service of a copy of the within

is hereby admitted.

Dated:

A 62

MEMORANDUM

SUPREME COURT. NASSAU COUNTY : SPECIAL TRIM PART I (Cal.#51 & 51A - 12/20/1973)

In the Matter of the Application of [illegible]

VS.

[illegible]

BY KELLY, J.

DATED February 13, 1974

Index #20014/73

RICHARD [illegible], Esq.,
Attorney for Petitioner,
300 Old Country Road
Mineola, New York 11501

JOSEPH JAEGAN, ESQ.,
County Attorney of Nassau County,
James N.Gallagher, Deputy County Attorney of Counsel,
Attorney for Respondents,
Nassau County Executive Building
Mineola, New York 11501

This proceeding is brought by the Petitioner, the President of the Nassau County Patrolmen's Benevolent Association, on behalf of himself and the Association to declare null and void as unconstitutional ARTICLE VIII Rule 22 (as amended) of the Rules and Regulations of the Nassau County Police Department. This Article and Rules pertain to personal appearance of Members of the Force, types of haircuts permitted, types of side burns permitted, mustaches, beards and goatees:

"Personal Appearance - The provisions of Article VIII, Rule 22 of the rules and regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to a point below 3/4 of an inch above the bottom of the earlobe. All provisions relating to moustaches, beards and haircuts shall be strictly conformed with."

"That this order amended Article VIII, Rule 22 which read as follows:

'Personal Appearance - Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by their Commanding Officer due to special assignment:

Haircuts - Hair shall be neatly cut and trimmed at all times while on duty. Hair styles shall be conservative and not excessive in length.

Sideburns - Sideburns shall not extend below the mid part of the ear and shall be trimmed level.

Moustaches - A short and neatly trimmed moustache may be worn, but shall not extend over the top of the upper lip of beyond the corners of the mouth.

Beards
Goatees - Male personnel shall be clean shaven when reporting for duty. Beards or goatees shall not be worn while on duty. A growth of whiskers shall be permitted while on duty for medical reasons only when approved by the Chief Surgeon. , "

In the proceeding herein, the Petitioner is seeking the same relief that his predecessor was refused, in this Court, in the case of GREENWALD v. FRANK, decided June 29th, 1972 and reported in 70 Misc.2d 632, aff'd as modified 40 A.D. 2d 717, aff'd 32 N.Y. 2d 862.

This Petition is identical with the prior one except as to the named Petitioner and the fact that the first was brought as an Article 78 Proceeding and this as an Order to Show Cause.

The admittedly sole justification for this repetitive application is that the case of Owen v. Barry, 336 F. Supp.487, which was cited in the prior action as sustaining the analogy of a Police Officer to a soldier, was reversed by the U.S. Circuit Court of Appeals, 2d Circuit, 43 Fed.2d 1126, subsequent to the affirmance of Greenwald by the Appellate Division and the New York Court of Appeals, and accordingly, it is contended that Greenwald is no longer binding on this Court, and consequently, the relief prayed for must be GRANTED.

With this reasoning, I disagree and I adopt the common sense logic of the Appellate Division, Second Department in GREENWALD (supra):

> "The rationale of the modest regulation in question, concerning personal appearance, setting forth rules as to haircuts, sideburns, mustaches and beards, is that there should be neatness and discipline in a large quasi-military organization such as the Nassau County Police Department so that the general public will have respect for the members of the department. In our opinion this regulation does not raise issues which rise to the dignity of constitutional questions."
> (Underscoring mine)

It is an established principle that the New York Court of Appeals is this Court's Appellate Superior and the ruling authority on all questions concerning the constitutionality of this State's Statutes and the effect of the United States Supreme Court decisions on their

constitutional status. It is likewise an established principle that a Lower Court must accept the Court of Appeal's construction of a State Statute.

Excelsior Pictures Corp. v. Regents, 2 A.D.2d 941, 942-3

People v. Norris, 46 Misc.2d, 44-45-46; 8 N.Y. Jur. Constitutional Law §44

339 Central Park West v. Graves, 260 A.D. 265, 266-7

Skrocki v. Greene, 242 A.D. 226

McKinney's Statutes, §150, Art. 56 CPLR

Johnson v. City of New York, 274 N.Y. 411, 430.

The Petition is, therefore, DISMISSED.

K E L L Y
J.S.C.

SHORT FORM ORDER

SUPREME COURT — STATE OF NEW YORK

~~TRIAL~~/SPECIAL TERM, PART I — NASSAU COUNTY

Present:
HON. PAUL KELLY
Justice.

In the Matter of the Application of
CLIFF W. SCHMIDT
individually and on behalf of those others similarly situated,
PETITIONER,
-against-
LOUIS J. FRANK, Commissioner of Police of the County of Nassau, and the POLICE DEPARTMENT OF THE COUNTY OF ~~XXXXXX~~ NASSAU,
Respondents.

INDEX NUMBER 20014, 19 73

MOTION DATE December 28, 19 73

MOTION CAL. NUMBERS 51 & 51A

TRIAL CAL. NUMBER

The following papers numbered 1 to 10 read on this ~~XXXXX~~ Article 78 Petition

	PAPERS NUMBERED
~~XXXXXXXXXX~~ Order to Show Cause (Motion #51)	1 - 4
Cross-Motion to Dismiss (Motion #51A)	5 - 10
Answering Affidavits	
Replying Affidavits	
Affidavits	
Filed Papers	
Pleadings—Exhibits—Stipulation	

Briefs: Plaintiff's/Petitioner's Defendant's/Respondent's

Upon the foregoing papers it is ordered that this ~~XXXXX~~ Petition is dismissed.

SEE Memorandum Decision dated February 13, 1974 attached.

Dated February 13, 1974

KELLY
J. S. C.

SCH 8 - 10M - 1/74

made and entered in the office of the
of
day of

Yours, etc.
John F. O'Shaughnessy
County Attorney of Nassau County
ney for
and Post Office Address
u County Executive Building
Mineola, New York, 11501

ney for:

0 o'clock in the forenoon or as soon there-
as counsel can be heard.

Yours, etc.
John F. O'Shaughnessy
County Attorney of Nassau County
ney for
and Post Office Address
u County Executive Building
lineola, New York 11501

ney for

FOR THE EASTERN DISTRICT OF NEW YORK

ROBERT W. MC CUNE,

Plaintiff,

-against-

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendant.

ANSWERING AFFIDAVIT

Defendants

Office and Post Office Address
New County Executive Building
Mineola, New York
516

To:

Attorney for:

Due and proper service of a copy of the within

is hereby admitted.

Dated:
Signed:
Attorney for

STATE OF NEW YORK)
COUNTY OF NASSAU)

being duly sworn, deposes and says that deponent is over eighteen years of age, not a party to the proceedings herein. That deponent is employed in the Office of the County Attorney of Nassau County; that on the day of deponent served within

upon

by depositing a true copy of the same securely enclosed in a post-paid wrapper in a post office box regularly maintained by the United States Government at Nassau County Executive Building, Mineola, New York, directed to the above at the addresses within the state designated by them for that purpose upon preceding papers.

Sworn to before me this
day of

Notary Public.

, LS:rb

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK
----------X

ROBERT W. McCUNE,

Plaintiff,

-against-

Civil Action File
No. 74C 1279

LOUIS J. FRANK, Commissioner of Police of the County of Nassau and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

----------X

The hearing before CHIEF JUDGE JACOB MISHLER, with regard to the constitutionality of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department, having been concluded on October 25, 1974, and decision having been reserved thereon,

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the time of the defendants to serve and file their complaint* in the above-entitled action, be and the same is hereby extended up to and including twenty (20) days after the service of a copy of the

*(Should be Answer)

Order or Judgment with reference to said hearing, with notice of entry thereof.

Dated: Mineola, New York
October 29, 1974

Attorney for Plaintiff

John J. O'Shaughnessy
County Attorney of Nassau County
Attorney for Defendants

SO ORDERED:

U.S.D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

ROBERT W. McCUNE, :

Plaintiff, :

- against - : 74-C-1279

LOUIS J. FRANK, ETC., :

Defendants. :

- x

United States Courthouse
Brooklyn, New York
September 16, 1974
2:00 o'clock p.m.

B e f o r e:

HONORABLE JACOB MISHLER, U.S.D.J.

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

Appearances:

ICHARD HARTMAN, ESQ.,
Attorney for Plaintiff
300 Old Country Road
Mineola, New York

LOUIS SCHULTZ, ESQ.,
Attorney for Defendant
Executive Building
West Street
Mineola, New York.

- - -

THE COURT: Both sides ready?

MR. HARTMAN: Yes.

THE COURT: Mr. Schultz?

MR. SCHULTZ: Yes, your Honor.

THE COURT: Mr. Schultz moved to dismiss the complaint on res judicata grounds, and I have determined after a close look at Justice MacCaffrey's opinion in Grinwold against Frank and the affirming opinion, I am convinced that the issue of violation of the plaintiff's constitutional rights was not adjucicated.

I further find that Judge Costantino's dismissal of the complaint in Schmidt against Frank was based on the judication of Grinwold against Frank. And at this point at least I respectfully disagree with my associate. I am not bound by his determination and I intend to hear the case on the merits. I will again re-examine the res judicata grounds and the opoinion when I am ready to write on this.

MR. SCHULTZ: Your Honor, in the case of Admiral Merchants Motor Freighting Corp. against the United States, 321 Fed. Sup. 353, which was the District Court case in the district of Colorado was decided in 1971, and which was affirmed in 404 U.S. 802 92 Sup. Ct. 51 30th L.E., the Court on page -- that Court followed the

Proctor and Gamble came against Byers Transportation Company, Inc., and held it would seem most expedient for the bureau to continue its representation of the numerous carriers on review to presume that each individual carrier has a separate right of review and would cause a proliferation of action, excercise a waste of judicial time and potentially inconsistent decisions. 355 Fed. Sup. at page 557. And I think the same thing is applicable today.

THE COURT: All right. I don't think we ought to waste too much time on it. All I say in answer to that, that relates to the question as to whether the same party or parties in similar positions had their day in court on the same issue.

I distinguish all those cases from this one in that I don't believe that Grinwold decided the issue.

MR. SCHULTZ: If your Honor please, I only want to take another moment of your time, if I may, please.

That that in Grinwold against Frank and in Schmidt against Frank, the actions were instituted by themselves for themselves and others similarly situated in order to declare Article 8 Rule 22 unconstitutional in all those similarly situated including the plaintiff in this action.

THE COURT: Well, I disagree with you, Mr. Schultz. It was by Mr. Grinwold individually and as president of

the PBA. That is not the same as a class action.

MR. SCHULTZ: I think you will find the title was where others similarly situated --

THE COURT: Nothing in the judgement that bars anyone else except Grinwold and the PBA.

MR. HARTMAN: I was going to point out, your Honor, as to the cases which are cited in my brief, in order for the doctrine which Mr. Schultz has put forth is to take effect, must be shown that the petitioner was a party to the action or he was given notice to the provisions that he participated in the litigation. Something more than a police officer which Mr. Grinwold was at the time.

THE COURT: I examined all the ramifications. I know you represented Grinwold and you represented Schmidt and now you represent McCune. And that was highly suspicious. I looked at that. I read the newspapers account of the PBA and apparently Mr. McCune is some kind of a contributor to it. But I think it avoids the entire issue. I think you're falling into Mr. Schultz's argument. We are not talking about parties at all. We are talking about the issues that we are to determine.

I don't think that the issue as to whether the county had a valid reason -- I forget the term used in Dwinn -- but it's similar to a rational basis for

imposing the regulation. Never litigated. Justice MacCaffrey's opinion said no issue at all. No issue of fact.

Now, Dwinn against Barry, of course, there is an issue of fact. You limit someone's right to dress. The State authority must make out a case for it. That's it.

I might say that the Appellate division apparently looked at my opinion in Dwinn against Barry ~~before I~~ was reversed or at least before it was remanded. And Justice Shapiro differs with me and apparently anticipated Dwinn against Barry, Circuit Court of Appeals. So out of that confusion I just am convinced that this particular issue, to wit, the right of the State to limit a police officer's dress was never determined. There was never evidence offered on that issue. Never litigated. And that's what we mean when we talk about res judicata. Once the -- once determined, that's it.

If it's determined here and finally, I would say that that is it. No other police officers can come in on this issue.

That's my interpretation of the res judicata challenge.

MR. SCHULTZ: By the same token, your Honor, I don't know whether or not today's issue will settle

the question for the 3599 other police officers who --

THE COURT: Well, I only have McCune against Frank. And the other 399 -- 999 cases, we've got seven other active judges. They may get the case. But all I have today is McCune against Frank.

My humble opinion, the litigation of this issue in this case when it is final will be a final determination and will not be relitigated in spite of your fears, Mr. Schultz.

MR. SCHULTZ: Thank you, your Honor.

Who do you want to go first? I am the defendant.

THE COURT: The one against Barry says even though you are the defendant you make out a case. You have the burden.

As a matter of fact, I think that's the thrust of all of the decisions that we are talking about.

MR. SCHULTZ: Inspector McBride, please.

THE COURT: Am I going to get a copy of the transcript?

MR. SCHULTZ: Yes, your Honor.

MR. HARTMAN: Yes.

THE COURT: All right. Because I take notes differently if I know I am going to get the transcript. I must make findings here.

MR. SCHULTZ: There is a question which your

Honor should decide and I will abide by it as to how it is to be paid, whether half by the PBA and half by the County.

THE COURT: Who's richer?

MR. SCHULTZ: The PBA.

THE COURT: I suppose they are.

MR. SCHULTZ: Take my word for it.

THE COURT: I know they are.

MR. HARTMAN: I have no comment.

THE COURT: All right, talk to Mr.Barbella and he will tell you.

What I think is fair is that the cost of two copies be paid for half and half. I don't usually say equally half and half. They are usually so unfair. But in this case on payment of fees, even though the County may be in debt, another $75. or $100. won't matter to the County, and the PBA is glad to pay their half. If they need it, you may loan it to them.

I N S P E C T O R W I L L I A M L. M C B R I D E, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Inspector McBride, what is your business or occupation?

A I am presently employed as the commanding officer of the First Precinct of the Suffolk County Police Department.

Q For how long have you been the commanding officer of the Suffolk County Police Department?

A For approximately eighteen months, sir.

Q Are you familiar with the decision that was rendered in this Court in the case of Dwinn against Barry?

A Yes, sir, I am.

Q I gather you know the defendant Barry was then the Suffolk County Police Commissioner.

A Yes sir.

Q Now, were you a member of the Suffolk County Police Department at that time?

A Yes sir, I was.

Q Now, at the time that the decision was originally rendered by Judge Mishler of this Court, what if anything happened with the grooming standards that were then in effect at the Suffolk County Police Department?

MR. HARTMAN: I object.

THE COURT: How is this relevant?

MR. SCHULTZ: I want to show what happened after the relation of the standards as far as the department is concerned.

MR. HARTMAN: I object.

THE COURT: I will take it, but I don't think I am going to consider it at all. I will just let you complete the record and let you develop the record. Even if it went haywire, I don't see the point. It's not within these issues.

MR. SCHULTZ: I think it is, if your Honor please, because we want to show --

THE COURT: All right.

MR. SCHULTZ: (Continuint) -- the relationship between the grooming standards and the requirements laid down by the Nassau County POlice Department and that which we are trying to avoid in our case.

THE COURT: All right, let's go ahead.

THE WITNESS: The grooming standards have been devoid of uniformity in the sense that the hair is much longer. Many police officers have opted to grow facial hair. Sideburns have become broader -- in the vernacular, mutton or pork chops side burns. Some officers, supervisors -- first line supervisory personnel have elected to wear beards. Some of the beards are neat and trim. Others are unkempt. Various officers now have hair that exceed below the collar line and is generally unkempt and pretty much in that manner.

Q Now --

THE COURT: I'm going to allow it. This is non-Jury.

MR. HARTMAN: The only --

THE COURT: I will hear the evidence of which I have doubt.

MR. HARTMAN: The only thing I was going to say is it's impossible for me to cross-examine because I don't know which officers he is talking about. Even if I did know, I don't know that I --

THE COURT: The expression is, do the best you can.

BY MR. SCHULTZ:

Q Inspector McBride, during the relation of the grooming standards, if we can use that vernacular for convenience, with regard to the question before the Court at this time, did there come a time when there was an incident at one of the great eastern stores in Suffolk County?

A That's correct, sir.

Q When did that take place?

A On November 25th, last.

Q When you say last, do you mean 1973?

A 1973.

Q Will you tell us what that incident consisted of?

A At approximately 12:30 hours, on the morning of

the 25th of November, my precinct received an assignment of armed felons held up in a supermarket, the Great Eastern department store, which is located on Sunrise Highway and Northwell Avenue, North Lindenhurst.

After arriving at the scene we determined that there was at least one armed felon within the premises.

The premises consisted of approximately 100,000 square feet. He was armed with a .306. Shortly after his arrival in the premises he had shot and seriously wounded two police officers, one of whom was in plainclothes, a detective, and the other was a uniformed officer assigned to my command.

During the course of these events, between approximately 12:30 a.m. and 5:00 a.m. the succeeding morning, the perpertrator was killed by police gunfire. At that time -- prior thereto we had reasonable information to believe that a second and possibly a third perpetrator was within the premises. When we ascertained there was a cadaver in the premises, we obviously secured the scene, waited for daylight to insure some safety and attempted to cause a complete strip search of the 100,000 square feet.

During the course of th e evening, in order to flush out the perpetrators, we employed the use of tear gas. And we used a rather extensive volume of tear gas in the

premises.

We did not have the privy to the plans of the building, nor were the airducts working to ventilate the gas through it. So we activiated the tear gas by direct approach fire at ground level. Obviously, we had to search the premises in order to render a proper search. We had to wear gas masks.

There were a few police officers in my command -- and there were other commands present, Highway Patrol Bureau, members of the adjacent precincts, detective units, who because of the facial hair, the wearing of the tear gas mask was not suitable. The tear gas mask was not suitable for them to wear.

Q Why?

A Pardon me, sir.

Q Why?

A Because the tear gas mask would cover the facial hair and therefore void a proper seal so you can go into the premises and breath pure oxygen. If you can't create a seal around the mask, the mask would be useless. It wouldn't serve any purpose. So we had to supplement subsequent police officers who were reasonably groomed, who had shorter hair.

If this situation were to apply today, we wouldn't be so successful in replacing the police personnel on hand

because a good portion of the personnel in my command have long hair.

Q And also facial hair?

A That's right.

Q You say the wearing of long hair and facial hair precludes the proper sealing of -- which is required when wearing a mask to go into the premises where smoke -- where tear gas has been used.

A That's correct, sir.

Q Now, do your police officers have occasion to assist fire fighters by going into fires?

A That's correct.

Q Do they wear masks at that time?

A That is also correct.

Q Would that same problem arise with regard to eliminating those police officers with the long hair and the facial adornments?

A Yes sir. In addition to that, in my opinion, it would create a fire hazard because of the officer's elongated hair protruding.

Q In what way?

A Possibly cinders could get on to the back of the hair. We are involved in police work in many aids prior to the arrival of the Fire Department. The police officer in

many instances, especially in Long Island -- this is no reflection on the volunteer Fire Department in Nassau or Suffolk County. But in many instances, in my experience, we are at the scene of a fire before the Fire Department in both Nassau and Suffolk. And it's a police officer's job to go in and preserve life. And he's not going to wait for the Fire Department to get there to go in with equipment.

So with the long hair, certainly, in my opinion, it would create additional hazards going into a fire.

Q Is the same thing true with regard to trying to prevent withsuicide?

A Will you clarify that?

Q Well, if anybody was on the premises and attempted to commit suicide and wouldn't come out, would you have to use tear gas?

A Well, that would be, in my judgement, one of your last resorts, to use tear gas to talk a would be suicide out, someone who is obviously emotionally deranged or mentally upset. Our department and every other department I know of would certainly try to talk him out before resorting to the use of tear gas. That is not --

Q Now, Inspector, tell me whatyou have observed with regard to these police officers with the long hair as far as the wearing of a hat is concerned?

A In my own particular command we are having occasion to have an increase of additional violations of the rules and procedures.

Specifically, in my judgement, many police officers when they adopt this long hair posture, they -- the hat or the cap device interferes with the proper grooming, the grooming of their long hair. So as a result they are apt not to where the hat.

Now, we have a requirement in the department -- I should voice it in this way -- that actually it's a lack of requirement. We are not required to wear a cap device while in a police vehicle. But once you disembark from the vehicle you are required to wear a hat.

And while it seems minor in nature, many police officers at the scene of an incident or just out directing traffic or handling a minor traffic violation or handling a disturbance or what-have-you, they are absent the cap device. And it's a violation of the rules and procedures and takes away from the wearing of the uniform. And it certainly looks chaotic at the very best.

Q In addition to looking chaotic Inspector, what about a possible obscuring of vision of a police officer would have with such long hair if he was out on the street without a cap? Tell me something about that.

A Well, if a police officer were involved in the direction of traffic, sir, his hair was so long as to impede his vision, certainly that is a safety hazard, in my judgement, if the hair were blowing across and covering over either eye.

In my judgement, and of a more significant magnitude, if he were involved in a high-speed chase, chasing a felon after a bank robbery or a hold-up or some crime against a person, any example of that nature, and the policeman's hair was blowing to and fro while he was the operator of a radio motor patrol car, that would not only create a hazard for himself if his hair was blowing back and forth across his face, but it would be -- it would interfere withthe proper use of the highway where he could create a hazard for other motorists.

Q Has there been an occasion, Inspector McBride, when you were present at a fireman's function or parade recently?

A Yes sir.

Q Where did that take place?

A We were hosts in the Village of Linderhurst, which is a hamlet within the First Precinct area, for the annual New York State Fireman's Parade. It is one of the largest parades held in New York State. Well, bringing it into focus,

it's about a seven-hour parade. upwards of 60,000 marchers and the like number of pedestrians.

We held it on August 25th of this past year. And, of course, being the commanding officer of the precinct and knowing a lot of the citizens and businessmen, community leaders, various elected officials and citizens within the hamlet of the precinct, -- in this precinct, to put it in proper perspective, it has a population of 240,000 known population. And during the course of this event I had had some citizens come up to me both in the private sector and in the business sector and relate their distaste at the appearance of the Suffolk County Police Department in that they don't look like uniformed police officers any more.

What happened to the grooming? What happened to the good looking sharp department that it once was?

The hairstyles and the grooming standards have gone down the drain.

That's the anonymous remarks that were made. Obviously, businessmen are not going to come up to police officers and tell them to their face and -- come up to whom they otherwise respect -- but we touch base with the community and they are going to relate that information to us. That is not the first time I have heard that.

MR. HARTMAN: I realize, as your Honor, this is

not a Jury trial and I am sure your Honor is going to take the evidence as it comes. But it's impossible for me to even ask questions on this type of -- about people walking up to this inspector.

THE COURT: Well, this is some evidence of the feeling of the community and the claim of loss of respect as a result of varying hairstyles and long hair.

That was on e of the things I think I mentioned in my opinion, that the lost of respect of the community can be reflected inthe lack -- in the impairment of the discipline of the force.

The police force must rely to some extent on the respect it gets from the community.

MR. HARTMAN: My objection was not against that type of evidence, but against people walking up to the inspector and saying this without the ability, the basis on which these statements were made. I have no way of examining.

THE COURT: It's almost like a sampling. It's almost like reputation. The community's feeling. How else do you prove how the community feels? You can't bring in 500 people. That's impractical.

Now, I see nothing wrong with this kind of testimony on the issue of the reaction of the community to

T1R2

long hair.

Q Inspector, are you also personally familiar with an incident involving a traffic violation by a long-haired motorist with a long-haired police officer?

A Yes sir, I am.

Q Will you tell us about that, please.

A During the latter part of August I had a young gentleman come in to my precinct who made a complaint against a police officer. The substance of the complaint was that he in fact was arrested by the officer for a vehicle and traffic violation. He passed a red light, failed to produce his registration. And these citations led ultimately to an arrest for harrasment on the part of the young lad.

During the course of the conversation, the -- we spoke to the young man -- just he and I were present. His father had related a call to me and he wanted to add his grievance.

So after we went through the scenario, the license and registration business, and I explained to him that the -- in my judgement, the issuing of the summons was lawful, and that the -- there could be nothing done with that, they would go through the route, through the court system, we got into the discussion about how this whole thing transpired in the first place. And he had an occasion to be stopped by the

policeman at this particular intersection in Lindenhurst, Broadway and Hoffman Avenue, and the officer observed him violate the traffic signal.

The officer was sitting in a marked police car. He was in the car without his hat on. The officer had mutton chop sideburns and hair down approximately to the collar line, and a mustache, Fu Man Chu mustache that connected with the mutton chop sideburns.

The officer questioned the motorist about passing the red light and to have him produce his license and registration. And after talking to him for a short period and counselling the motorist, that officer cited him accordingly.

The motorist admitted to me that he lost his cool and that the terminology he used -- he said, "I realized I was getting a summons at that time and I started to curse the officer out in front of six or seven other pedestrians that were walking by."

This was in the middle of the day, about 2:30 in the afternoon.

And I said, "Why did you lose your cool like that? It's not the first time you have been stopped? Is it the first summons you have gotten?"

And he said it was not his first summons, even though it was the first time he was ever arrested. He said

that the -- he said, "I thought the police officer -- I didn't take him as a police officer. He didn't have a hat on. He had on the blue short sleeved shirt. I know it was a police car."

But he said, "Without the hat on and the long sideburns and the mod styled hair, I thought he was a guy just like me and we could rap and talk this thing out."

When he realized that the police officer was going to give him a summons, and then the summons led to the summary arrest because of the profane language that was taking place, and in the officer's judgement that he acted -- there was harrasment in the street, he really got up tight and he said, "I just didn't recognize him as a cop."

I said, "What do you mean, you didn't recognize him as a policeman? He had a marked police car. He was in uniform and had his sidearm and was readily identified as such."

And he said, "No, he didn't look like a copy with the sideburns and the FuMan Chu mustache and the long hair. He looked like a guy rapping with me."

That's the sum and substance.

THE COURT: What are pork chop sideburns? How far do they?

THE WITNESS: They are flared, your Honor. I am

-- this will be a layman's point of view. Flared. Very thick sideburns which actually would pretty much cover the entire facial growth.

That's for want of a better term. That's what the fashion shops call them, pork chop sideburns. And many of our young officers -- and we have a heck of a lot of police officers between twenty-one and twenty-eight who have Fu Man Chu mustaches connected to the pork chop sideburns. There is a continuous growth between here and here which obscures the identification. In substance, that's what it is.

Q There was a question, then, of lack of respect of that police officer from what you were able to find out?

A In my judgement, there was a question of lack of respect because, again, in my judgement, sir, there is a question of lack of identification. He wasn't identifying with him as a police officer.

Not that a policeman stands so apart that he's isolated from the community, but this young lad, a good citizen, was identifying facially, face to face with another police officer, but absent some identity.

THE COURT: Isn't that because the public hasn't gotten yet used to police officers with pork chop sideburns, but once they do they will recognize that that

does not necessarily identify the wearer as a non-police officer.

THE WITNESS: You're asking me my opinion?

I think that depends on what segment of the public we are talking about. In my particular precinct where we have half of the population under twenty-one -- but everyone under twenty-one doesn't wear pork chop sideburns. A lot of them are reasonable length, playing high school ball or what-have-you. And the other half of the population is obviously somewhere between twenty-one and senior citizens.

Are mutton chop sideburns representative of the Lindenhurst population?

In my judgement, no. Not out on Long Island.

Q Have you noticed any effect on the morale on the balance of the police officers in your precinct, namely, those who are complying with the grooming standards?

A Well, if I can clarify this point, counsel. There are no grooming standards in the Suffolk County Police Department at the present time. The grooming standards have been withdrawn from the rules and procedures as of the 26th of June, this year, as a result of the court edict. So what has transpired is that we have some policemen who have their own ilk as to their own individual thinking how they want to adopt

grooming standards. No one has the authority, other than that you are to press your trousers and have your shoes shined, and your hair can be as long as you want and your beard can be down to thettips of your shoes if you so deisre. But what has developed obviously with 300 policement and supervisors is that it is a morale problem. Some police officers -- they h e been geen given this -- I don't question the Court, -- but they have been given this lattitude to adopt any standard they see fit. And it has gone completely, in my judgement, out of wack, where they have gone beyond all reasonable means of moderation where, in my personal opinion, it disgraces the uniform in a manner in which they wear their hair. It's unkempt. It's shoddy. And in many instances it's dirty, which is a sad commentary on the public servants and it goes against the grain of some other police officers who feel we should not be -- have such a stereotyped system to look so uniform as to have no difference of opinion at all, but to look like a reasonably attired group of police officers trying to garner some respect from the public, trying to, I guess, in effect have some comman presence. And, in my opinion, after eighteen years in this business, that's what it's all about.

When you are in the street, the police officer must relate to the citizen he's dealing with. Obviously,

he's got to relate. But the art of communication goes a long way, further than just the how you look. It's your ability to talk to people. It's your empathy with them, your ability to elicit the facts and elicit information in order to get the job done.

So when we talk about this communication business, it's more than hair. In essence, morale ties into it whereby some police officers obviously have dropped their sideburns longer, the hair is a little more mod, and they keep it fairly well groomed.

And a lot of the girls think it's kind of cute. And a lot of it stems from their own wives. So nowdoubt some of them are pretty neat. But it's becoming a morale problem. And it's, in my judgement, a disciplinary problem. And if we lose discipline in the police department, we are not going to have much of a system in municipal police service as we know it in my county.

Definitely becoming a morale problem.

Q This is separate and apart from pony tails?

A I don't know of anyone that has a pony tail.

Q That's been prohibited?

A Sir?

Q But that has been prohibited?

A I will speak for the First Precinct. There is no

one with a pony tail inthe First Precinct. No sir.

MR. SCHULTZ: I have no further questions.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q In reference to Judge Mishler's question before, I think he asked you about the educational process. And now, there were no female police officers; is that correct? You do recall Suffolk County not having female officers, at least the village police, town police not having women police?

A You're going back quite a few years. In 1960 the Suffolk County Police Department was formed. And we had police officers who were women three months after the formation. They were appointed provisionally. So with due defference to the County of Nassau, I believe we had police women before Nassau.

Q At one time certainly police women were not as prevalent as they are today in the New York City, Suffolk and Nassau county police department? You would agree with that?

A I dont' know about the New York City police department. They had police women in the bureau in the City of New York for thirty years.

Q Prior to thirty years; there was at one time where they were not as accepted as they are today? So this --

if a police woman stops someone for a red light and got out -- or they saw a policewoman without a hat on and with a blue uniform, at one time they would not accept it, and you might run into a situation as you have described with the young fellow seeing the police officer with the long hair.

THE COURT: What is the question?

Q The question is, is it not a fact that the -- this educational process could apply equally to police women being accepted, to black police officers being accepted, to anyone who is a little different than the six foot two inch crewcut white police officer, male, that was generally accepted thirty years ago.

THE COURT: Are we bringing in racial motives into this case?

MR. HARTMAN: No.

THE COURT: You know, if it's not there, it's not there. We are only talking about hair length.

Q At one time -- Inspector, you are familiar with the generally accepted image of football players or baseball players who had crewcuts? Like twenty, twenty-five years ago, you would admit this was the generally accepted trend, would you not, sir?

A Crewcuts twenty-five years ago? I don't quite frankly know, counsellor, what football players looked like.

Q Ten years, fifteen years ago as compared --

A Shorter hair than what is in vogue today.

Q And the football players that are playing today Joe Nameth, whoever the football player might be, generally, are these football players given any less respect as to their ability as football players -- or given any less recognition because of the longer length of their hair.

A They are not public servants.

MR. SCHULTZ: I object on the grounds that it's immaterial to this issue.

THE COURT: Objection sustained on the grounds that Inspector McBride is no authority on the respect that a football player gets. He should know something about the respect that policemen get from the members of the community.

Q As far as these people that you say are walking up to you and saying that isn't it terrible what the rules and regulations have done -- now, haveyou questioned in your command police officers who have long hair and whether or not the same type of people have walked up to them and said the same thing? In other words, in effect, you have short hair or shorter hair than, let's say, the -- generally the police officer that you described. Have you questioned those police --

THE COURT: Wait. You're making an assumption.

I don't know whether that is so. I don't know whether they do or not.

MR. HARTMAN: All right.

Q Now, are you familiar with the Nassau County rules and regulations? Have you read them? About the midpoint of the ear, the sideburns being down to the midpoint of the ear?

A I am not familiar, Mr. Hartman, with the interpretation of the Nassau County Rules and Regulations with respect to grooming.

Q Certainly, when you talk about the length of sideburns, if the sideburns were below the midpoint of the ear, would that -- let's say, to the bottom of the ear, would that engender any less respect by the public in that police officer?

A Personal opinion?

Q Yes.

A If they were well-trimmed and neat, no sir, they wouldn't. But if they are mutton chop --

Q Well then, the rules and regulations, in your opinion, in Nassau County was -- prescribed that the sideburns cannot be below the midpoint of the ear without being in violation -- in your opinion, first of all, would not cause disrespect by the person if that rule and regulation was violated.

MR. SCHULTZ: If your Honor please, that's been asked and answered and I object to its repetition.

THE COURT: Overruled. I will allow it.

If you can answer it.

THE WITNESS: In my opinion, no sir. If it were well-trimmed and they were not indicative of a mutton chop type sideburns or elongated hair, unkempt or unruly.

Q Such as in your particular case, I notice your sideburns are slightly below the midpoint of your ear, Inspector.

THE COURT: Only because the barber missed not more than an inch.

MR. HARTMAN: I wanted to indicate --

THE COURT: Just about midpoint.

Q But you do realize that technically if they are one-eighth of an inch below the midpoint of the ear you are in violation of the Nassau County Rules and Regulations.

MR. SCHULTZ: I object.

THE COURT: I will allow it.

But the point is -- I know what you are getting at, Mr. Hartman. But there must be a line someplace. It's very easy to -- well, you go below the line and there is a technical violation. That's true.

Q Where is this line, Inspector? Because you say pork chop sideburns -- in your opinion, you say pork chop sideburns are no good, yet longer sideburns are okay. How about a mustache? Does a mustache cause disrespect by the public?

A No sir. Mustache? A mustache does not in and of itself. But when it becomes unruly and looks like something that is a growth out of a cartoon or that some sheep dog would wear, then it would.

Q Now, the Nassau County Rules and Regulations prescribe that the mustache must not be beyond the outer portions -- outer corners of the lips nor below the top lip. Now, have you seen mustaches within the Suffolk County Police Department which may be below the top lip or beyond the corners of the mouth and which have caused disrespect by the public because of that?

A In and of themselves, no.

R3 fls

(Continued on next page.)

Q So that strict compliance with that particular aspect of the rules and requlations in and of itself is not the criteria thatyou are using; is that correct?

A That's correct.

Q In other words, the question really here is a question of neatness? Is it correct, Inspector, that a person with sideburns down to the lower portion of his ear can be neater than a person with sideburns -- without any sideburns at all? I mean is that in and of itself the determination?

A It's a question -- are you asking me the question -- a question of neatness? My answer is it's a question of reasonableness and grooming. Obviously, someone who has sideburns to the lowest point of the earlobe or down to their jaw line may be very neat and orderly in a manner in which they shave it and what have you. Others may have them very closely cropped and it's unruly.

Q So if you were to see an individual in the Suffolk County Police Department with sideburns slightly below the midpoint of the ear, that in and of itself would not cause you to say, "This person is not neat. This person is causing disrespect for our police department."

I assume that in this respect you would take the whole attire of this person, the way he dresses, the way the top of his head is groomed, and the entire -- the totality

of the situation; is that correct?

A I would look at the back of his hair, the sideburns. And in many instances, they have beards and unruly mustaches to go with it. And then I would make a determination based on his entire facial characteristics, keeping in mind the nape of the neck and then make my conclusion as to whether he had it unkempt and unruly based on that.

Q Now, we have taken the question of the sideburns which you say can be below the midpoint of the ear without violating your standards. We have taken the mustache which can be below the top lip or the corners of the mouth. How about a small goatee or any type of goatee? Not one that you have described that goes to the floor, but a goatee that an individual might have which is neat and clean in and of itself? Would that be something which would cause all these difficulties to start arising, lack of identity, lack of uniformity, etc.

A That might not cause any difficulty with health reasons, sir, but I would submit that the wearing of the gas mask would possibly interfere with the adoption of the goatee because you couldn't get a proper facial seal around the chin area.

Q Does the gas mask go directly around the chin so that the small goatee would cause that --

A Well, certainly under the chin. You have to have a tight seal. That's where the cannister sits, right below the chin line.

Q And the number of times that police officers in Suffolk County in the last, say, twelve months had to use gas masks -- could you estimate that?

A I can't account for the entire county of Suffolk. I can account for my precinct. We have used tear gas on occasions approximately three or four times in the past two and a half years involving armed felons where police officers have been killed or where perpetrators have been killed. The need is always there. The question is always prevalent that it could be this afternoon.

Q Of course. And the three or four times in the last two and a half years, how many times aside from the time that you described have you found difficulty in the wearing of the gas masks?

A We didn't have any difficulty prior to that because the grooming standards were pretty much adhered to. Even though they were technically on the books last November, there was a moratorium on them for practical purposes while the Court litigation took place.

Q Now, the --

THE COURT: Do you know whether the county attorney

applied for certiorari to the Supreme Court in Dwinn against Barry?

THE WITNESS: I don't know.

THE COURT: You don't know anything about --

MR. HARTMAN: To my knowledge, he has not, your Honor.

THE COURT: All right.

BY MR. HARTMAN:

Q Now, you say that there has been a reaction --

MR. SCHULTZ: Excuse me. If your Honor please, to add to what Mr.Hartman said, it's my understanding after your Honor decided the case, when it was remanded by the United States Court of Appeals for the Second Circuit, that a notice of appeal has again been filed so that that matter has not yet even been passed on.

THE COURT: I see. But it is on the appellate route.

MR. SCHULTZ: It's on the appellate route at the present time.

THE COURT: I think that thequestion of how far the police department can go or for that matter any of the agencies can go was before the Supreme Court. We will have too much of this until they speak. And with all the complaints I hear, I certainly think it ought

to go up.

MR. SCHULTZ: I think your Honor is aware -- I think it's the Eighth Circuit of the United States Court of Appeals, there was a determination favorable to the police department. So that youhave the Second Circuit saying one thing and the Eighth Circuit saying another thing.

THE COURT: There you are.

MR. SCHULTZ: That's why the United States Supreme Court should handle it eventually no matter who wins.

THE COURT: I heard Inspector McBride apologize for criticizing my opinion in this case. I don't like it myself. But I think it's the law. That's all. So you don't have to apologize when you attack the final result. I agree with you.

THE WITNESS: I believe we need regulations, sir, and grooming standards. I mean from the department's point of view, we are in desperate shape. It's definitely a morale problem.

THE COURT: As Judge Shapiro said -- he went even further than was necessary. He thought because I said the police department is a paramilitary organization it requires that type of discipline. Now, that's

what Judge Smith disagreed with. He went back to the English villages and said, "Oh, no, this is a peaceful organization of citizens. It's almost like a voluntary group designed to keep the peace. Nothing to do with the military."

I didn't say military. I said paramilitary.

As I say, that is water over the dam and no sense in rehashing it. I do think the Supreme Court ought to have a look at it.

BY MR. HARTMAN:

Q Now, Inspector, you say that there should be certain regulations. What do you believe that these -- since you do agree that the regulations that presently are in effect inNassau County are -- that one can violate them without -- certainly violating your criteria of the regulations, what do you think these regulations should be?

A This is --

Q Your personal opinion?

THE COURT: I don't think that Inspector McBride is an expert on drafting regulations. I will sustaing the objection to the question on the grounds that it's outside his field.

Q The wearing of hats -- are police -- do police women wear hats in Suffolk County?

A We see so few of them in uniform -- when they are in uniform, they wear hats. But we don't have any police women personnel that are on patrol, counsellor, contrary to what you read in the newspapers and public dissemination.

Q Is there any prohibition against police women being on patrol in Suffolk County?

MR. SCHULTZ: Objection as to whether or not there is any prohibition. I think that is something that a commanding officer has a right to assign or not to assign.

THE COURT: No, I will overrule that.

I had gone into all this, Mr. Hartman, in the county trial and I recall that the testimony was that police officers, police women on patrol duty -- it was an experiment and it was dropped, and that the police women were used only as -- in a clerical staff or maybe an investigation that does not involve patrol. You can expand that if you wish.

MR. HARTMAN: No.

THE COURT: But, remember, we are talking about Nassau County. You asked this witness about police women. Their work is a lot different than policemen.

Q Now, the initial reaction you said to this dropping of the rules and regulations was that Suffolk County

police started growing longer hair? Now, has it come to the point where they have become more moderate, where you have seen individuals with longer hair starting to cut their hair, and started -- where this has become more accepted because of the strapping of the rules and regulations?

A It's become more accented throughout the department in that there are no regulations. But I have seen very little evidence of moderation on the part of patrol personnel in that they have adopted to mod hair treatment and they have gone way out, to coin a phrase, and stayed way out.

Q So that which is now beginning to be accepted I assume by the Nassau County citizens as the mode of dress and appearance of the Suffolk County police is that of longer hair.

MR. SCHULTZ: Objection. That was not being accepted, according to the testimony.

THE COURT: I will allow the question and see if the witness agrees.

Q Do you understand, Inspector? Do the citizens understand that the Suffolk County Police have longer hair and that the observance of one with longer hair does not exclude him from being a police officer?

A In my judgement, counsellor, some of the citizen in Suffolk County have difficulty identifying who are the cops

and who are not the cops. With respect to some of this hair issue, they are not accepting anything. Some of them at best are tolerating it, what their police officers look like.

Q By the word accept, you understand, Inspector, I am not talking about agree, but are they -- are they understanding that the Suffolk County policemen have longer hair and identify --

A It indicates the point that to their own senses they can see it. Obviously, police officers in the county of Suffolk have enjoyed longer hair for the past six, seven or eight months now.

Q And the people --

A It's readily evident by their patrol in the streets.

Q Are the citizens in the first precinct understanding that there are other matters in which one can identify a police officer aside from the length of his hair such as the color of his uniform and the badge and the other matters in which they have to understand him by.

A Yes. There are -- that is true. There are other ways to identify. In my experience, many people do not look at an officer's shield. They try to identify with his face and describe his facial characteristics particularly, which make it difficult when facial hair obstructs his identi-

fication.

Q Well, certainly, Inspector, you would not want the public to identify an individual as a police officer or not a police officer by the length of his hair? I assume there could be more mistakes than if they identified the color of the uniform or the badge that they had.

A I hope they wouldn't prejudge him, counsellor, by the length of his hair. But human nature being what it is, we know that it is not the case.

Q Not if they agree, Inspector. But would you rather an individual judge -- not judge a police officer, but identify a police officer by the blue uniform, the badge, the authority which he carries with the police car and the other indicia of being a police officer or by the length of his hair?

A I prefer he be identified by all the attachments that come with his uniform, all the identifying features.

Q And certainly once it becomes accepted -- I say accepted, not agreed -- but once it becomes understood, that police officer with the longer hair -- certainly you don't anticipate any difficulty in the public being able to identify that blue uniform, the badge and the police car, do you?

A I'm not prepared to answer that, counsellor. Time will tell. We anticipate a great deal of identification

difficulty with respect to morale and ultimately discipline.

Q When you say morale, how is the morale of the members effected -- been determined -- the morale of the members who were previously told that sideburns to the bottom of the ear could cause suspension or demotion or any other penalty? How has their morale been affected by now saying they can judge for themselves what their personal appearance should be?

A If I may clarify the question, there were no instances within the past two years, to my knowledge, in the police department -- you are acutely aware of this since you are the counsel for the PBA -- where any police officer was brought up for violation of the rules and regulations with respect to hair and hair standards grooming.

Q I am defending one for six months in Suffolk --

A Hair and grooming standards within the First Precinct.

Q No. You said Suffolk County.

A I am responsible for morale and discipline in the First Precinct. There is a great deal of problems with morale now because there is a lack of pride in the uniform. At least, in the wearing of the uniform. Up until a few months ago there was a certain pride in it. Many fellows had a great pride in neatness and appearance and in the manner in

which it was worn. And human nature being what it is, and the police being a paramilitary organization, or being guardians of the public, if they wear that uniform in an unkempt manner and the hair is shoddy, it creats a lot of internal problems. And that's what we have at the present time. It's become a disciplinary problem.

Q I am talking about the individuals involved -- those who now concentrate on their police work rather than worrying about a half inch on their sideburns, how their morale is affected, those individuals who choose to have long hair.

A How is there morale affected? Some of the morale is good and some is bad. It depends on how mod the police officer is. Morale is difficult. Take, for example, the younger police officers. It may be very difficult.

Q Isn't that difficulty with the younger men caused by the fact that they want to fit in with the rest of the public when they are off-duty, when they associate with young fellows who have long hair and not being identified with them.

A Then they can get a wig. That's very easily accomplished in all walks of life. It's a question of maturity. That's what we are dealing with. A lot of young fellows realize that they are policemen for eight hours a day and then they want to relate back with their own peer group, as you say, and what have you. But you can wear a wig to accomplish that means.

Q Four out of five policemen have less than five years of service, don't they? Approximately eighty per cent?

A A lot of youngsters.

Q Aren't those the ones who really determine the morale of the department, those eighty per cent rather than the number who might be -- might have fifteen or twenty years of service?

A I think the facts that determine the morale of the police department are factors of employment. With the young police officers morale fluctuates a great deal up and down. On either side of the spectrum, seeking insignificant -- the hair issue has become a big thing with the young police officers. Some of them, my own opinion, don't know what they are arguing about when it comes to -- they -- it's a question of immaturity or a question of maturity.

Q Haven't many of them expressed to you the fact if they feel if they are out risking their lives, which they are in many cases, and go through a tremendous amount of difficulty as police officers in all types of working conditions, and instead of being rewarded when they come back, they are told their sideburns are a quarter of an inch too long, and haven't they told you this affects their morale more than anything else?

A No sir.

May I answer that?

THE COURT: Sure.

(Continued on next page.)

THE WITNESS: I have no instances where that effected morale.

MR. HARTMAN: I have no further questions.

THE COURT: Anything else.

MR. SCHULTZ: Just one moment, your Honor.

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q Inspector, I think one of the questions put to you was how often in the past two years was it necessary for the use of gas masks and I think you said either two or three occasions; is that correct?

A Yes sir.

Q And you said you didn't know when you might need it again?

A I said we may need it this afternoon.

Q How often, in your personal experience, does a police officer in the First Precinct discharge his firearm while on duty?

A I can't relate that. But we have had four policemen shot in my precinct last year seriously.

Q So over the entire -- the entire year?

A Yes.

Q But a police officer doesn't shoot his gun or discharge his weapon every day?

A No. In two of those instances the police officers' gun was in his holster. One was shot on the back stoop of a house, and the other incident, he was shot in a supermarket.

Q But a police officer must still bring his weapon with him every day?

A That's correct.

Q Even though a year might go by and he may never use it?

A Yes.

Q And for the same reason, you never know when you are going to need a gas mask under the incidents that you described?

A That's correct.

Q And the man with the pork chop sideburns or mutton chop sideburns that you described could not use such a gas mask?

A- Not in my opinion.

Q And a man with the goatee couldn't use it, and the man with long hair would have the fire hazard?

A In my opinion, he would be.

THE COURT: All right, anything further.

MR. SCHULTZ: No sir.

THE COURT: You may step down.

Next witness, Mr. Schultz.

(Witness excused.)

MR. SCHULTZ: Inspector Willett.

W I L L I A M W I L L E T T , called as a witness, being duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Inspector Willett, are you employed by the Nassau County Police Department?

A Yes sir, I am.

Q What is your rank?

A Deputy Inspector.

Q For how long have you been in the Nassau County Police Department?

A 21 years.

Q Inspector, what are your duties as a Deputy Inspector?

I am the commanding officer of the Community Relations Bureau in the Nassau County Police Department.

Q What does the Community Relations Bureau of Nassau County Police Department do?

A Well, many and varied responsibilities. However, it is the cementing of the lines of communication and understanding particularly of alien segments of the community with the Police Department, to work in the cooperative efforts

to solve our mutual problems. And this is basically the function of community relations, to regain the confidence lost in the police --

Q You said allied segments --

A Alienated segments.

Q Are you rtalking about certain racial minorities?

A Yes.

Q Does that include blacks?

A Yes.

Q Hispanic people?

A Yes.

Q And do you personally go out on these particular public relations projects?

A I have for eight years.

Q And you address the groups?

A I do.

Q Now, tell me what your experience has been, Inspector, with regard to the attitude of the public with whom you come in contact with relation to police officers with long hair?

A Well, the average person that I would be speaking to in this area would usually be making a complaint to me about the police officer because of their long hair. And it has been a task which has been very frustrating and

difficult for me for eight years instructing in recruitment and in-service training. Because we are a country of people that label and we do stereotype and we don't let a person get by whose appearance we observe before we make valued judgments. That has been very difficult and very frustrating to get to the police officer who comes from that 96 percent majority -- majority population in Nassau County to stop making those kinds of valued judgments because of either Afro or long hair and connecting it with some social, economic politics situation which was distasteful to them and therefore taking action based upon that whereby the crew-cut person who could be much more dangerous to the police goes on about his business many times, and many of these -- most of these complaints come to me in that way, that the police officer sells himself on the fact that the blown-up hair or the Afro, the long hair or the pony tail as being connected with some social norms and not the law. However, if we look hard enough we will find that the violation of the law is not based upon that appearance. This is basically it.

Q In other words, there is a reaction that sets in on the part of, say, a police officer when he sees this long hair?

Now, what -- how does that, in your opinion, relate to the long hair problem of a police officer?

6 Willett-direct

A Well, I feel that the police officer does not come from a vacuum when he goes into the Police Department. He comes in almost in toto from that majority segment of society which is completely dichotomized at this point to the extreme, one being the majority segment and one being that small minority segment which is trying to change things.

Now, I feel that the police officer already has a certain -- I'm in Community Relations because the minority segment has cast -- it will not accept him, and feels that he is in fact the one who is the guardian of the status quo. So he loses one side.

Now, since long hair, no matter whether it's right or wrong, in my opinion, has been identified with the Civil Rights movement, with revolutionaries, as being in league with this kind of thing. There is no doubt in my mind that he is going to turn off 96 percent of the people in Nassau County. And to put him in that very tenuous position between these adverse groups I think is unfair to him. And I think he has a -- as difficult a job to do now under adverse circumstances and I don't see how he will ever do it.

Q You mean the police?

A Because he's been getting hit from one side, both sides. As I say, we do label. We do stereotype people. And if you've got long hair, that 96 percent of the population

in that county is going to identify you no [illegible] with that group of hippie or whatever that stan[illegible] there's going to be a direct lack of confidence [illegible] police officer from that segment.

Q You say, then, from the work you have [illegible] past eight years in public relations from your pres[illegible] experience in Nassau County and elsewhere that a police officer with his long hair would then be labelled as a hi[illegible] with or without a uniform?

A He is going to be -- he is going to be labelled as one who is trying to break down certain institutions whether it be dressing and grooming standards or what have you. It would be -- it's the kind of thing that I'd like to compare with the Civil Rights movement because I think that many black people feel that because the officer or the person has long hair decide that the officer is just a person and he is agreeing with my situation. He feels the same way I do. And they have found many times that they were absolutely wrong in making that kind of opinion, that valued judgment. Because the person could disagree with them very much so.

Namely, I think of motorcycle clubs is one good example. Many have long hair. However, they are not in agreement with every kind of thing that is associated with the Civil Rights movement.

Q In other words, not all long haired people agree with each other?

A People tend to think because as they see it, as they view it, they make that valued judgment at that time. They would feel that this is one who agrees with me. And he need not necessarily be. So the minority segment sees this. And until it's proven otherwise, I feel that the majority segment of the population is going to make the same kind of judgment. I wouldn't want to see the officer -- any officer between a demonstration and a counter-demonstration with long locks flowing down his shoulders because I definitely know which side they would feel he is in agreement with, even though he may not be. And I think they have to maintain an impartial and neutral position not only in how they view certain social changes, but how they appear. And I think they should take the middle line.

(Continued next page.)

JB:ss
R5

Q You feel, then, that the grooming standards are required and are fair and reasonable?

A Definitely I do.

MR. SCHULTZ: I have no further questions at this point.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q Let me understand this. Part of your job was to direct police officers that they should not make a value judgment as to the person's guilt or -- or involvement by the length of their hair when they were apprehending teenagers, let's say, or older individuals with longer hair? Is that what you are saying?

A No. No, I didn't say that. The question of guilt or innocence has not entered into it at this point.

Q Yes.

A Just to hold someone suspect.

Q Hold someone suspect. This is wrong, is it not, for someone to hold someone suspect because they have longer hair?

A Definitely.

Q And yet you never made any attempt or -- would you -- did you ever make any effort to instead of directing the police officers that they -- that this was wrong to feel

that way, which you did, to try to get some way -- get everyone else to cut their hair? You -- in other words, you used the approach to tell --

THE COURT: You're making statements rather than asking questions.

MR. HARTMAN: All right. I am sorry.

Q Would that be the better approach, Inspector, to direct supervisory officers that they need not have the police officers cut their hair in order to engender respect in the Department?

A Counsellor, what I was talking about at the time was not the hair length of the police officers. I was talking about how the police officers view hair length and hair styles of the people that they were serving.

Q But you admit this was wrong? This was wrong for the police officers to feel this way?

A Yes.

Q Is it not equally wrong for the supervisory officers in the police department to feel this way about the police officers wearing their hair longer?

A To feel wrong? They are not the same thing. It's definitely not the -- in one area you have rules and regulations. In the other you have the possibility of involving someone in a criminal offense based upon hair style

or hair grooming.

Q You have a possibility here to have someone violate a rule and regulation and he's subject to dismissal of his job because of the length of his hair.

MR. SCHULTZ: If your Honor please --

THE COURT: Objection sustained.

MR. SCHULTZ: Objection.

THE COURT: Argumentative.

Q Let me ask you this. You heard Inspector McBride state that when given the choice because of the termination of the Courts, police officers in Suffolk County allow their hair length to grow longer? You were present when he testified to that?

A Yes.

Q And yet you say 96 percent of the persons in Nassau County find long hair suspect or repugnant or words to that effect?

A The police officers themselves are from that segment of the society. And until we train them -- they come into the police department almost 100 percent with those kinds of negative and adverse feelings toward people who wear non-acceptable hair styles.

Q And yet when given that choice, the police officer would choose to keep their hair longer, is that not

correct?

A I couldn't say. I couldn't say whether they would or not. They conform with the regulations.

Q Do you have any reason to believe that the reaction in Nassau County would be different than the reaction in Suffolk when the police officers allow their hair to grow?

A I would say -- if you would give me a better example, I would say the reaction may be in general in the villages it would be different than the reaction in Nassau County.

Q I say Nassau and Suffolk County.

A They are very much the same.

Q So -- all right. The reaction, you don't believe it would be different, I assume?

A The reaction of what?

Q The reaction of police officers wearing longer hair if rules and regulations were withdrawn similar to --

A Do you mean the reaction of the people toward the police officers?

Q To the police officers wearing longer hair. You say -- I will withdraw that.

Let me ask you this, Inspector. Do you agree with Inspector McBride that the determination as to neatness,

which he says engenders respect is more than just the length of the sideburns or the length of the hair or the length of the mustache, but it's the totality of the picture of that individual?

MR. SCHULTZ: I object on the grounds that that isn't exactly what Inspector McBride --

THE COURT: All right, I will allow it.

THE WITNESS: You're talking about neatness. Inspector McBride was talking about neatness. I didn't testify once to neatness. I have been out of uniform for approximately 8 years. My testimony was based upon how I thought the police officers' appearance would cause deep-seated irrational kinds of responses from the citizenry. I never once testified to anything about neatness or grooming.

Q Do you think, Inspector, if you were in uniform that you would call -- you would cause deep-seated irrational responses because your sideburns are below the middle point of your ear, and if you were in uniform you would be in --

A I would cause deep-seated responses because of my skin color?

Q Not about your skin.

A I feel this is the same thing. At the time

when I was in uniform my skin color was as repulsive as some of the hair styles now.

Q That has changed. That has changed.

A That is your opinion.

Q Would you say, therefore, that no police officer -- and I don't want to get into the black-white issue --

A I don't want to get into it either.

Q That you should change the rules and say no police officer should be black because there are a lot of people who feel that they don't like blacks or long hair, and that the rules and regulations allowing black people judging black people, or judging people by their -- the length of their sideburns and --

THE COURT: Is that a question.

MR. HARTMAN: I am sorry. It was a reaction.

Q Inspector, if you were in -- if you were in uniform at the present time -- and I ask you -- with your sideburns the way they are now, do you believe that you would cause any of these deep-seated hatreds because of your sideburns, the thickness that they are and --

MR. SCHULTZ: Objection, if your Honor please.

THE COURT: Just a moment.

In the case on trial, have the lawyers found

the testimony that the jurors want to hear.

MR. HIRSCHMAN: We have found only part of it.

THE COURT: Have you.

MR. DE PETRIS: I found everything that I could find.

THE COURT: We will have to suspend. This may take some time. I have a jury that asked for some testimony. I don't want to keep them waiting any more.

MR. SCHULTZ: May we approach --

THE COURT: Say it on the record.

MR. SCHULTZ: I don't know whether this should go on the record.

THE COURT: Everything should be on the record.

MR. SCHULTZ: I am again concerned about the lateness of the hour which may find us here.

THE COURT: All right. I had my eye on the clock and that's why I said what I said. I can't keep the jury waiting.

MR. SCHULTZ: I think that comes first.

THE COURT: Now, I don't know how long it will take. But I suggest you wait until the testimony is read to the jury and let's see how far we can go.

MR. SCHLUTZ: All right.

THE COURT: Are you almost through.

MR.HARTMAN: I am just about.

THE COURT: Let's complete with this witness.

THE WITNESS: Please, counsellor, can I have the question.

BY MR. HARTMAN:

Q If you were in uniform and your sideburns were the length that they are now, do you think you or anyone similarly situated could cause a deep-seated hatred and abuse by the public merely because of the length of your sideburns being the length they are presently, which is below the lower portion of your ear?

MR. SCHULTZ: If your Honor please, there is no question of hatred in this particular case.

MR. HARTMAN: I think it's rather a reaction. I think that's the word.

THE WITNESS: Lack of confidence.

Q Take the way you look. Would your sideburns, considering the length that they are, would that in and of itself -- do you think it would cause this type of reaction of the public?

A The only reason the sideburns are this way is because I am not in uniform. If I were I would conform to the rules and regulations.

Q That's to conform to the rules and regulations because they are the rules and regulations. But I am saying in response to the -- showing the great interest which you have to the -- not you, but the Commissioner, do you think your sideburns in and of themselves would cause that forgetting about the rules and regulations? Would they cause the great upheaval in the public's view where you would have to cut your sideburns to regain the confidence of the public?

A No. My sideburns aren't extreme.

THE COURT: Let the record show the sideburns are above the lower portion -- the lower lobe and somewhere between the middle portion and the lower portion, neatly trimmed.

Q And the rules and regulations that you are familiar with, are that if they are below -- in Nassau County -- the middle point of the ear, they are in violation of the rules and regulations? You are familiar with that?

A I know the rules. I don't know of anyone who has been brought up on charges on that rule unless it exceeds tremendously that limitation.

MR. HARTMAN: I have no further questions.

MR. SCHULTZ: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: You gentlemen can remain in the Courtroom if you wish and just remain seated where you are in the first bench. It's just that counsel will have to come up to the counsel table. You can leave your papers there.

Are those lamb-chop sideburns that Mr. DePetris has?

They were talking about lamb-chop sideburns. I don't know what they are.

Is that what you mean, Inspector McBride? Do you see Mr. DePetris here, the gentleman standing here.

INSPECTOR MC BRIDE: Much more wider than that. That's without --

THE COURT: That's just a modification.

INSPECTOR MC BRIDE: I don't know to whom I am talking to.

THE COURT: Assistant U. S. Attorney.

A VOICE: Your Honor, you will find that the shape -- the pork-chop sideburns are similar to a regular meat pork-chop. It comes down narrow over here and then comes out.

THE COURT: My trouble is I'm kosher and I can't understand it.

INSPECTOR MC BRIDE: Much thicker.

THE COURT: Would you call that a pork-chop sideburn.

INSPECTOR MC BRIDE: No.

THE COURT: All right.

(Recess taken.)

MR. SCHULTZ: Now, it's 4 o'clock. I would like to adjourn until the next convenient date for your Honor.

THE COURT: All right. The next convenient date is the 27th at 2 o'clock.

MR. HARTMAN: What time.

THE COURT: The 27th. That's a Friday. I know I will be busy with trials all during the week of the 23rd. I've got a trial starting -- at least one. And I have motions. And I hope to get through with my motions in the morning and then I will take the hearing.

Now, on Friday I will go as long as you want. If it takes to 6 o'clock --

MR. SCHULTZ: ThatFriday I don't care about.

THE COURT: All right. Then we will --

MR. HARTMAN: The only problem is the restraining order. It is stayed until the hearing and determination. If that is understood and there is no objection by Mr. Schultz, then there is no --

THE COURT: Any objection to that.

MR. SCHULTZ: The only question is, of course, we can make a mental or written observations of what is happening without any enforcement of it, without anybody being written up or --

MR. HARTMAN: Well, we don't want --

THE COURT: Let me tell you this. I can make a finding. A temporary restraining order is only good for 10 days under Rule 65. But I can make a finding that there is enough to continue the temporary restraining order until this motion is decided.

MR. SCHULTZ: I don't want you to make that finding if you don't have to.

THE COURT: Then the other -- then the answer is you consent to it and you should do it in writing on the order. Consent to the continuation of the temporary restraining order until the determination of this motion.

MR. HARTMAN: Your Honor, the problem that we have is that presently in effect is a teletype order, number 167 which says that superior officers shall continue to take full cognizance of all violations of Article 8, Rule 22 of the Rules and Regulations and submit reports of violations in the usual manner.

Now, the -- I don't know if Mr. Schultz or the Commissioner or someone interpreting this order as meaning that you can take cognizance and enforce the order as long as you don't prosecute.

MR. SCHULTZ: Nobody has been directed to do anything with regard to his hair. You can take cognizance --

MR. HARTMAN: If it says to take full cognizance of all violations and submit reports of violations in the usual manner.

The way it's being interpreted unfortunately is that they can enforce the order. And I --

THE COURT: No. That won't prohibit enforcement for any other violation.

MR. HARTMAN: This says that the superior officers shall continue to take --

THE COURT: All right. If Mr. Schultz will not sign and exercise an extension --

MR. SCHULTZ: I will sign it or agree upon -- agree to it right on the record.

THE COURT: I don't have Rule 65 before me. But my recollection is -- or maybe it's my requirement that the attorney for the party against whom the temporary restraining order is intended signs so that there is no question about it. Obviously, I have to

have time to decide this matter. And I will do it as quickly as I can so you can be on your way if you are not happy with it. And I am talking to both parties. It's the only fair thing to do.

The matter will continue on the 27th. I am told I have one other hearing which may not take more than 10 or 15 minutes.

Now, how long will this take? 2 hours, 3 hours.

MR. HARTMAN: I only have a couple of witnesses.

MR. SCHULTZ: About 3 hours.

THE COURT: 3 hours. All right.

MR. HARTMAN: Can I -- could I ask your Honor -- because I have a number of inquiries that have been coming back to me regarding this rule and regulations. I went out after the -- I mean this teletype order. I feel that this teletype should be withdrawn and that the members be told --

May I show it to your Honor.

THE COURT: No. But let's look at the restraining order. Mr. Schultz has it. So as soon as he gets through --

MR. SCHULTZ: Will your Honor see what I wrote.

THE COURT: All right. Thank you.

From prosecuting the plaintiff.

I am not concerned with anybody else but Robert W. McCune. I am not going to give the Police Department orders. I am only interested in McCune against Frank and nothing else.

MR. HARTMAN: It went further than that. The order -- I mean at least the original order, your Honor, it says --

THE COURT: You drew the order that Judge Rayfiel signed. I didn't sign this. I am just reading this.

MR. HARTMAN: From enforcing the rules and regulations of the Police Department in McCune against Frank. In that case. But it went further. This was, of course, with the -- for the individual for which it was brought.

MR. SCHULTZ: Is he making this a class action.

THE COURT: No.

MR. HARTMAN: We are challenging the rules and regulations.

It says, that pending the hearing and determination of this matter brought on by an order to show cause, and the defendants be and are hereby temporarily enjoined from enforcing Article 8, Rule 22 of the Rules and Regulations of the Nassau County Police Department, that the defendants be and are hereby

temporarily enjoined pending the hearing and determination of this matter from prosecuting the plaintiff herein pursuant to departmental procedure for a violation of Article 8.

MR. SCHULTZ: We are not prosecuting the plaintiff.

MR. HARTMAN: That's the second portion. But what has happened is that a teletype order went through immediately saying that superior officers shall continue to take full cognizance of all violations of Article 8, Rule 22 of the Rules and Regulations.

THE COURT: Do you read that as restraining all of the -- any prosecution against all others.

MR. HARTMAN: No. What the situation is, they are enforcing the Rules and Regulations even in light of the --

THE COURT: Against others? I don't see anything prohibiting -- I don't think that restraint, as I read it, is against the enforcement of the order, period.

It says that the defendants be and are hereby temporarily enjoined from enforcing Article 8, Rule 22 of the Rules and Regulations of the Nassau County Police Department, that the defendants be and are hereby temporarily enjoined pending the hearing and

determination of this matter from prosecuting the plaintiff herein pursuant to departmental procedure for a violation of Article 8, Rule 22 of the Rules and Regulations of the Nassau County Police Department.

That the defendants be and are hereby temporarily enjoined pending the hearing and determination of this matter of prosecuting the plaintiff pursuant to the departmental procedures for violation of that rule.

MR. SCHULTZ: That is the --

THE COURT: I suppose it can be read both ways. But, my view, when we talk about restraining provisions, we've got to read it naturally. That's all I see.

MR. SCHULTZ: Your Honor, the matter against Mr. McCune was scheduled for the 17th, which is tomorrow, and it's being adjourned without date.

THE COURT: All right. That's the way it should be. Wait until we get through with --

MR. HARTMAN: I am sorry. In the meantime, your Honor, the enforcement of the rules and regulations against everyone in the police department is being continued.

THE COURT: I can't help that.

MR. HARTMAN: Well, I thought the order read differently. I thought the first portion read differently. Because what is going to happen is that there is going to be a multiplicity of litigation.

THE COURT: It may be. But I've got McCune against Frank.

All right, the 27th.

(Whereupon, an adjournment was taken to Friday, September 27th, 1974 at 2 o'clock p.m..)

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

ROBERT W. MC CUNE, :

Plaintiff, :

-against- : 74-C-1279

LOUIS J. FRANK, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

September 27, 1974
3:00 o'clock P.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

Appearances:

RICHARD HARTMAN, ESQ.
Attorney for Plaintiff

LOUIS SCHULTZ, ESQ.
Attorney for Defendant

THE CLERK: Civil hearing, Robert W. McCune, against Louis J. Frank.

THE COURT: I think when we suspended we had completed one witness, as I recall it.

MR. SCHULTZ: I think, if your Honor please, when we suspended last week, we finished with --

MR. HARTMAN: Two witnesses.

MR. SCHULTZ: Inspector McBride and Inspector Willard, and we were to resume today.

THE COURT: Did we finish with the second?

MR. SCHULTZ: Yes, your Honor.

THE COURT: All right. Call your next witness.

MR. SCHULTZ: May I move this back, your Honor?

THE COURT: Sure. Put it any place where it's comfortable.

MR. SCHULTZ: Captain Carney, please.

ROBERT CARNEY, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q In order to cut it short, Captain Carney, you are employed by the Nassau County Police Department?

A Yes, sir.

Q And you are a captain in the Nassau County

Police Department?

A Yes.

Q How long have you been a member of the Nassau County Police Department?

A Twenty-one years.

Q For how long have you been a Captain?

A Three years.

Q What is your command at the present time?

A Special Service Bureau, Commanding Officer.

Q What is your -- or what are the functions of the Special Services Bureau of the Nassau County Police Department?

A Maintain energency ambulance service and also emergency rescue service for Nassau County.

Q Now, in connectionwith the emergency services that are maintained by the Special Services Bureau, is there any particular -- any special equipment that has to be worn from time to time by Nassau County police officers assigned to that bureau and by other police officers?

A Yes. We have many specialized pieces of equipment, tools.

MR. HARTMAN: Excuse me. Could you please speak up?

MR. SCHULTZ: Yes.

THE WITNESS: We have special equipment in the emergency building. There are gas masks, oxygen masks, special rescue tools, ladders, boats. Just about anything that would be related to emergency rescue.

Q Now, referring to the gas masks, are they only with the Special Services Bureau or are they elsewhere in the Nassau County Police Department?

A Gas masks are distributed throughout the police precincts. There are forty in each police precinct. The CPU has 125.

Q CPU? What is a CPU?

A That's Crime Prevention Unit. That is a special unit.

Q Forty in each precinct and 125 with the Crime Prevention Unit; is that correct?

A Yes.

Q In addition to that, do you have any motor equipment attached to your bureau?

A Any more --

Q Motor equipment. Certain types of vehicles.

A All types of vehicles. Two trucks, two emergency rescue trucks, trailers.

Q Referring to the gas masks that are with the Special Services Bureau and which are also distributed amongst

the precincts -- and there are eight precincts in Nassau County; are there not?

A Yes.

Q So you have headquarters and eight individual precincts of the Nassau County Police Department.

A Yes.

Q Are the gas masks distributed in any other place except at headquarters and the eight precincts?

A Crime Prevention Unit has theirs, as I mentioned earlier, and there are three local police departments who also have gas masks.

Q What do you mean by local?

A Local villages who have their own police department.

Q Okay. But we are not concerned about them today.

Now, did you have any particular training yourself with regard to the use and wearing of gas masks?

A Yes. We maintain a continuous training program in the emergency bureau. And as part of that training we follow the fireman's training center out in Old Bethpage. And out there they have a smoke house. And the fellows in the emergency unit and myself, we don these Scott Airpaks and go into the smoke house to familiarize ourselves with the

workability and familiarize ourselves with the equipment.

Q Is there any problem in the wearing of gas masks by a person who has some facial adornments that are -- such as long sideburns, moustache, goatees, beards?

A Well, we do not have that problem in Nassau County because we do not have --

MR. HARTMAN: Can he finish the answer?

THE WITNESS: Sir?

MR. HARTMAN: You were interrupted when you were answering. I am sorry.

THE WITNESS: I said we do not have that trouble at the present time in Nassau County because we cannot have long sideburns or beards.

Q To your knowledge, would the wearing of long sideburns or the wearing of long moustaches or goatees or beards present a problem in the wearing of a Scot pack or gas mask?

MR. HARTMAN: Objection.

THE COURT: Overruled. I will allow it.

MR. HARTMAN: My objection, your Honor, is there has been no basis shown since Capt. Carney testified that he has no experience with --

MR. SCHULTZ: He didn't say that.

THE COURT: I assume the witness can

express an opinion as an expert.

We have male obstetricians who come into court who never had a baby an' they will tell you about it. They express expert opinion. And an expert doesn't have to experience it.

THE WITNESS: We have numerous tests conducted by different laboratories and agencies throughout the United States.

Q What would be the problem?

A What would be the problem?

Q If you had long sideburns or a moustache or a goatee or a beard as far as the wearing of a Scotpak or gas mask is concerned.

A They present -- if the facial hair continues along the line with the seal of the mask, it prevents a proper seal.

Q When you say it prevents a proper seal, tell us so that I can understand it, so that the Court can understand it.

A Well, the equipment that we use, the gas mask and the Scot airpak has a full mask. It comes under your chin, up the side of your face and across here and it's tightened with different straps. It has to fit properly flush against the face to prevent noxious gas and smoke getting underneath and being inhaled by you.

Q And your department is prepared to use those masks when an emergency which requires that usepresents itself; is that correct?

A Yes, sir.

Q Anyone who is adorned with long sideburns, moustache, goatees or beards could not properly wear such a gas mask; is that correct?

A That would create a very bad hazard.

THE COURT: Assume that the seal is inside and somehow conforms to the distortion and contortions of everyone's face, right?

THE WITNESS: Yes, sir.

THE COURT: Why should the beard be any special type of distortion of the face?

THE WITNESS: Well, the seal is rubber, molded rubber. And if you have a growth of hair or beard, it's going to hold that rubber away from your face. You can't tighten it up that tight to get an absolute tight seal.

THE COURT: But the gas mask is not fitted to each individual face? There are standard gas masks?

THE WITNESS: Yes.

THE COURT: So, of course, everyone's face has a different contour?

THE WITNESS: That's right.

THE COURT: Now, you say the inside rubber does closely adhere along facial lines or almost all, I suppose -- I imagine there are some that couldn't possibly fit right.

THE WITNESS: Yes, sir.

THE COURT: In other words, it would be your face or my face, even though we have different shapes.

THE WITNESS: Different tests that were conducted, as I mentioned earlier, have proven that certain facial disfigurements or contours will add to the hazard.

THE COURT: I see. But you say hair is something that the seal cannot conform to?

THE WITNESS: That's right.

THE COURT: Why is that?

THE WITNESS: The thickness of the hair. It holds the rubber away from the face. And no matter how tight you pull the straps, it does not allow it to seal.

THE COURT: How about a fellow who hasn't shaved for a day? Of course, you wouldn't permit that under your neatness regulations.

THE WITNESS: No, sir.

THE COURT: But let's assume you did and they didn't shave for a day. Would the seal be uncertain or --

THE WITNESS: It would add to a slight amount of leakage. Yes, sir.

THE COURT: All right.

Q Would that cause a seapage through the seal into the nostrils or mouth of the noxious gases or things that you were trying to hold out by the use of the mask?

A Yes, sir.

Q Now, do you have any literature on the subject, Captain?

A Yes. I have a copy of the American National Standards on Respiratory Devices, and a copy of tests conducted in England, and I also have a report that was conducted down in the Los Alamos testing laboratory.

Q Is that Los Alamos, New Mexico?

A Yes, sir. These are official documents that you receive as the commanding officer of the Special Services Bureau, yes, sir.

Q May I see them, please?

THE COURT: Can you tell me whether -- if you know, whether regulations concerning length of sideburns to the point about the middle ear were promulgated with a view to that hazard, to wit, if it came below

the middle part of the ear it would be a hazard.

THE WITNESS: The length -- it would vary on the individual. It wouldn't interfere with the gas mask unless it interfe ed with the seal.

THE COURT: What's what I mean. But how low may you have your sideburns before you feel it might present a hazard?

THE WITNESS: It all depends upon your face. The mask is going to fit differently on one person than another.

THE COURT: But I assume the safest course would be to have sideburns no lower than you have?

And that's really the upper part of the ear. That would be safer than having it where I have mine, for example, about the middle -- I may pass the regulations, right?

THE WITNESS: Yes, sir.

THE COURT: I need a haircut, incidentally.

But would that be more hazardous than yours?

THE WITNESS: Yes. The closer the hair is to the sealing line, the more hazardous it would be.

THE COURT: I see. All right. But you don't know whether the regulations were designed with that hazard in view? You had nothing to do with the

regulations, did you?

THE WITNESS: No, sir.

Q Captain, I am particularly concerned with the report from the American National Standards Institute, Inc., of 1340 Broadway, NewYork, New York. And referring you to page 9 and page 10 thereof, is this the document which you say you received from that institute?

A Yes, sir.

MR. SCHULTZ: If your Honor please, may I offer it for identification, first showing it to Mr. Hartman?

THE COURT: Anything may be marked for identification.

Are you familiar with the report?

MR. HARTMAN: No. But I have no objection to it being marked for identification.

MR. SCHULTZ: How about in evidence?

MR. HARTMAN: Of course, I object to it being marked in evidence. There's been no basis for it.

THE COURT: I think before I take it, Mr. Hartman would have to have the opportunity to study it and find what basis there is for it.

We can accept into evidence reports of studies made by -- there must be a foundation laid. For example, if whoever made the study could show the method of the

study, the statistical basis for the conclusions reached, I could take it.

But I will take it for identification. It may be marked for identification.

Is it an official publication?

MR. SCHULTZ: Yes, sir.

THE COURT: By which agency?

MR. SCHULTZ: American National Standards Institute, Inc.

THE COURT: What is that?

MR. SCHULTZ: It is a practice for the respiration protection for the fire service.

THE COURT: Is it a governmental agency or private --

MR. SCHULTZ: No. It's the --

MR. HARTMAN: Your Honor --

MR. SCHULTZ: It's the Secretary of the United States Department of Interior, Bureau of Mines. And it was prepared for the Bureau of Mines and was issued as an official document.

THE COURT: Well, that may be another basis for it. I thought it was just a study you were giving me.

May I see it?

Well, I will take it for the purpose of

establishing a standard in the industry for manufacturing the preventive devices in gas poisoning and other problems connected with it. Just to establish a standard.

It may be marked.

THE CLERK: So marked as Defendant's Exhibit A in evidence.

Q Captain Carney, what are the occasions when those gas masks or Scotpaks are required to be used?

A There will be many varied times. Gas masks will be mainly used when tear gas is used to possibly bring a criminal out of a building, when there is a hostage situation, and also to disperse crowds during riots, disorders.

Q Have there been occasions in the last three years when they have been used?

A Yes, sir.

Q On about how many occasions?

A It's hard to put an exact number on it. But there have been many tines when they have been brought to the scene on stand-by.

Q In any event --

MR. HARTMAN: I am going to move that the answer be stricken. It is contradictory. He says they have been used many times and then brought as

standby.

THE COURT: Inconsistent statements, I thought they were used to attack credibility. I will allow it.

MR. HARTMAN: He qualified his first answer to say that they weren't used and --

THE COURT: I will allow it. Inconsistencies are a virtue sometimes in this court.

Q One never knows when the use of the gas mask is going to be required; is that correct?

A Yes, sir.

Q One never knows when the use of a police revolver is required; is that correct?

A That's right.

Q Yet you are required to carry your revolver every day?

A Yes, sir.

Q And the department and the CDU and the local precincts therefore have to stand by with their masks?

A That's correct.

Q And the men --

THE COURT: Of course, only special units stand by with these masks.

THE WITNESS: No, sir. Any --

THE COURT: Well, police officers on patrol

don't carry them.

THE WITNESS: No, they don't carry them. They are stockpiled on the precinct station houses. And any situation could arise where the man on the street could be called in to get the gas masks or they are sent out to a given situation.

THE COURT: I see.

MR. SCHULTZ: I have no further questions.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q Captain, what precinct are you in?

A I am not in a precinct. I am the Commanding Officer of the Special Services Bureau, which is a headquarters command.

Q For how long have you been in the Special Services Bureau?

A Since 1972.

Q Prior to 1972, where were you assigned?

A Highway Patrol Bureau for two years. And prior to that I was in the precinct.

Q For how long were you in a precinct prior to those two years?

A The time of my job in 1953 to 1969.

Q From 1953 to 1969, how many times did you

personally use a gas mask in the performance of your duties?

A Performance of actual police function, never.

Q How many times were you present when a precinct officer used a gas mask in those sixteen years?

A Never.

Q In the two years that you were in Highway Patrol, how many times did you personally use a gas mask?

A Never.

Q How many times in your presence did a highway patrolman use a gas mask?

A Never.

Q Now, you talk about the CPU with the approximately 125 men using gas masks; is that correct? Or being -- having the use of gas masks.

A Of the 125 gas masks assigned to that bureau --

THE COURT: CPU is again --

THE WITNESS: Crime Prevention Unit.

Q The Crime Prevention Unit is a plainclothes unit; is that correct? They do not wear uniforms?

A Yes.

Q And there are 125 gas masks assigned to the CPU. Can you tell me what regulations, if any, there are on the mode of appearance as far as hair regulations are concerned for the CPU, the Crime Prevention Unit?

A They are a non-uniform bureau and they do not conform to the rules.

Q As such, they have sideburns which are certainly well below the middle point of their ears, certainly down to their chin in many cases; is that correct?

A In some cases.

Q And moustaches connected to their sideburns or moustaches which are below -- well below the lower portion of the top lip and the outer corners of the mouth; is that correct?

A I can't honestly answer to their appearance. I am not assigned to that bureau. I don't have too much contact with them.

Q Well, in your familiarity with the Crime Prevention Unit, certainly there are a good number of these members who have moustaches below the upper lip?

A There are a number. I wouldn't say a good or small number. There are some.

Q And the hair length -- the hair length on a number of these members go below their collar, which is the back collar, as far as the length of their hair; is that correct?

A I -- again, I can't answer in all fairness because I do not work that close with them.

Q There are a certain number of them that do have

it below the neck?

A I have seen them.

Q And as far as goatees, they are -- there are a certain number that have goatees?

A Again, I will have to answer the same way.

Q In any event, Captain, as you said before, if they were to have any of these moustaches, goatees, sideburns, they would not be in violation because they are non-uniform; is that correct?

A Yes.

Q And yet you have 125 gas masks which are assigned to the Crime Prevention Unit. How many times has the Crime Prevention Unit used the gas masks in the last, let's say, two years that you have been assigned to Special Services?

A I couldn't answer you on that. You will have to see their Commanding Officer.

Q How many times has the -- in a Special Services Bureau, do you have the use of gas masks in the Special Services Bureau that you supervise?

A Yes, sir.

Q What are the specific services that you supervise?

A These would be any situation that happened in Nassau County that the patrolman or police officer on the

street is not equipped to handle. Specialized equipment would be needed.

Q Special equipment would be such as gas masks?

A That's one of them.

Q And how many times in the last two years have you and the Special Services Bureau used gas masks?

A Actually used them?

Q Yes.

A Use of --

Q Use of them.

A The past two years, never.

Q Certainly the comparison that Mr. Schultz made referring to revolvers, you have made use of your revolver in all the times which -- which I questioned you about before, the sixteen years in the precinct, the two years in the Highway Patrol, and under certain circumstances in the Special Services Bureau; is that correct?

A I have never used it, no, sir.

Q You have drawn your revolver at one time or another?

A In actual police --

Q Yes.

A No, sir.

Q Have you been present when Police Officers

have drawn their revolvers or used their revolvers?

A Yes, sir.

Q In the sixteen years in the precinct --

A Yes, sir --

Q (Continuing) -- this certainly was not a rarity, was it?

A Yes, I would say it would be.

Q The comparison of the use of the gas masks to the use of the revolver, as far as the precinct members are concerned, are they called upon to use their revolvers at a much greater rate than the gas masks?

A On the actual use, I would say the gas mask is more in demand, used more.

By using it -- if I may clarify that --

Q Pulling the revolver from the holster as compared to putting a gas mask on the face and running into a smoky situation.

A Well, pulling a revolver or putting the gas mask on, I look at them in a different light. We are to the scene more times on stand-by with the gas mask where a person is in the house, or there is a disturbance, where it is not necessary to use it, where the man would come out. The situation is resolved without putting tear gas in there. But where you say drawing a revolver, the man is there. It's part of his equipment. He has the revolver. As far as drawing the

revolver and standing around with his revolver in his hand, n
I would say we use the gas mask more in this respect.

Q But your testimony is -- well, I will withdraw that question.

THE COURT: Is the revolver also used as a display of authority as well as used in protection?

THE WITNESS: Yes, sir.

THE COURT: I would say that is part of it.

THE WITNESS: Yes.

THE COURT: Well, a gas mask wouldn't serve that purpose, would it? It is a different -- you wouldn't display a gas mask to show authority.

THE WITNESS: No.

MR. HARTMAN: I have no further questions.

MR. SCHULTZ: No further questions.

THE COURT: All right, you may step down. Thank you.

(Witness excused.)

(continued next page)

Redican-direct

JB:bd
lpm2

V I N C E N T R E D I C A N, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Chief, give us your title and your place of employment.

A Deputy Chief Inspector, Nassau County Police Department, Commanding Officer of the 1st Division, which comprises the 4th and 5th Precincts.

Q So that you are the commanding officer of two precincts in Nassau County, the Police Department?

A Yes.

Q Two of the eight?

A Yes.

Q Chief Redican, for how long have you been with the Nassau County Police Department?

A Almost 28 years.

Q Do you have any expertise as far as physical fitness or self-defense is concerned?

A Yes. I instructed defense tactics in the department for about 18 years and studied judo where I hold a brown belt.

Q Brown belt?

A Brown belt in judo, which is considered instructor grade.

Q What is the art of judo? What does it consist of?

A Well, it consists of controlling a person, taking him into control. It is one of the Japanese martial arts. It's a combat technique.

Q Now, Inspector, do you instruct any of the police officers or cadets or rookies, or whatever title you may wish to give to the young people in the department, in the art of judo?

A Yes. I have instructed in the Training Bureau, in recruit classes for, as I said, 18 years. And then in in-service training we ran riot schools for four or five years during the late 1960's.

THE COURT: How long a period is the course?

THE WITNESS: The recruit course, the complete recruit course is 14 weeks. And I would teach defensive tactics and each man would receive about 16 hours -- 12 to 16 hours.

Q Now, in connection with the art of self-defense which you teach to recruits, what can you tell me in relation to that as it relates to long hair worn by a person?

A We instruct the officer that where they have a prisoner that they have trouble taking into custody, that if they have long hair it would be very useful to grab the hair in the back, grabbing it close to the scalp, and this would induce some pain to mentally off-balance the person. But further it would physically make him off balance. And we instructed them that where you off-balance a person, possibly 90 percent of the technique has been successful by physical off-balance.

Q Now, would you say --

THE COURT: Are you talking about hair on the head or hair on the face or both?

THE WITNESS: Both. But what we were instructing at the time was hair in the back mostly.

THE COURT: Doesn't it all depend on how much hair?

THE WITNESS: Yes.

THE COURT: Because there are degrees. How much -- how much hair is necessary to get a grip? Does it depend on the hand or the hair or both?

THE WITNESS: Well, enough that he could grab in close to the scalp and kig the knuckles into the scalp. Actually, separating the scalp from the --

THE COURT: Isn't it true that you can have

Redican-direct

hair above the hairline, but so bushy that it's easy to grab, and you can have hair below the hairline that is so close to the skin that it isn't manageable.

THE WITNESS: Yes. I would say bushy or long hair --

THE COURT: Bushy or long hair --

THE WITNESS: Or long hair you would probably achieve the same result.

Q Now, if you say that that is one of the things that are taught to the young police officers --

A Yes sir.

Q Do you say that the police officer is the only one who is aware of that art, of grabbing somebody by the back of the hair in order to bring him off balance?

A No. I think it would be -- people would be aware of it through common sense. And then, of course, all of the martial arts schools that are around today, they are teaching the defenseive technique that can be utilized to control a person. And I believe that the public is aware that the same technique could be used against a policeman who had long hair as well as a policeman utilizing it against someone else.

THE COURT: Ideally for your purposes, you would prefer crew cuts then in every case.

THE WITNESS: I like crew cuts.

THE COURT: Isn't that true for your purposes I mean?

THE WITNESS: For my purpose, the close crop is -- the military style haircut, yes, would be the most safe.

Q So that if a police officer had the long hair, he would be subject to the same type of attack as you had recommended to your young police officers in subdueing a criminal or a possible criminal?

A I believe he would be at a severe disadvantage, yes.

Q What would happen to the police office if he had the long hair and was prepared to draw his revolver and he was grabbed by his hair?

MR. HARTMAN: Objection.

THE COURT: It's hypothetical and the witness is an expert in judo. I will allow it as an expert opinion.

THE WITNESS: Well, I believe that he would lose mental control as well as physical control. His equipment could be taken away from him. Nightstick, police billy, revolver could be removed from him while he is in this condition of mental and physical

off-balance.

Q Chief Redican, you therefore recommend that as far as pulling, the hair or grooming regulations of the Nassau County Police Department be maintained as fair and reasonable; is that correct?

A Yes.

Q Now, Chief Redican, you say there is a compelling necessity for your opinion?

A Well, my opinion, yes sir. The regulation is compelling, yes.

Q Chief, in the last 8 or 9 years, have you had other types of training in connection with self-defense such as the use of the gas mask?

A Yes sir.

Q Tell us about that.

A I attended a Smith and Wesson riot school and tear gas training session at the Smith and Wesson factory in Connecticutt. That was a two-day session. And also a five-day session in the United States Army Military Police School at Fort Gordon. That was a five-day session. This was for civilian police and also military.

Q Was this while you were with the Nassau County Police Department?

A Yes.

Redican-direct

Q Were you sent there in your official capacity?

A Yes sir, I was.

Q By the County of Nassau?

A Yes.

Q Tell us what type of training you received at Smith and Wesson and also at -- Fort Gordon, did you say?

A Yes.

Q Tell us first what type of training you received at Smith and Wesson.

A The Smith and Wesson training was run by a Harry Wells, who was a superintendent of police in Hongkong. And two days was almost entirely devoted to tear gas technique, usages, and also protection and treatment when someone is subjected to tear gas. The gas masks were thoroughly gone into. We checked the tear gas rooms where the grenades were manufactured and the tear gas masks were shown and demonstrated. At that time it was brought out that facial hair would interfere with the seal of the gas mask as well as any other abnormalities of the skull. But facial hair was one of those things because it wasn't able to be compressed to form a seal as skin would be. Skin would be more flexible.

The Fort Gordon training, it was basically the same. We went out into the field and practiced with

tear gas and tear g , masks. The same -- the same precautions were mentioned as far as the seal and facial hairs.

Q We haven't had many riots in Nassau County in the last ten years, have we?

A We had some disturbances, but not many.

Q By any chance did you see any photographs of the riots that were taking place in the City of Boston two weeks ago in connection with a school integration program?

A Yes, I saw some.

Q Did you see any photographs of anybody being pulled by the back of the neck with long hair?

A I believe I did see that.

MR. HARTMAN: I object to that. I don't see its relevance.

THE COURT: Sustained. I'll sustain objection.

MR. SCHULTZ: Did Your Honor sustain the objection?

THE COURT: Yes. The conditions are not the same conditions as we have here.

MR. SCHULTZ: I have no further questions of this witness.

(Continued next page)

CROSS-EXAMINATION

BY MR. HARTMAN:

Q Chief Redican, you testified that you believe the rules and regulations as promulgated by the Commissioner are fair and reasonable because there is a -- I think you said a compelling necessity for them. Is that the statement you made?

A Yes. I answered that question.

Q Now --

A May I go further?

Q No. Your attorney can ask you other questions.

A Fine.

Q Now, the firstpart about the rules and regulations state that the sideburns must be no -- must be three-quarters of an inch above the lower portion of the ear lobe at the midpart of the ear.

Now, the sideburns being down, let's say, an inch below that, to the lower portion of the ear, there would be no compelling necessity for defensive tactics for having the sideburns at the midpoint of the ear as compared to one inch.

A Not from defense tactics.

Q As far as defense tactics, if it was even two inches or three inches lower and closer to the skin,

again, there would be no compelling necessity for that type of rule or regulation.

A Not if they were close to the skin.

Q Now, you take a moustache, a moustache which is below, let's say, a half-inch or one inch below the upper portion of the lip or beyond the corners of the mouth, as far as defense tactics there would be no compelling necessity for having it above the upper lip as compared to a half-inch or an inch below that so long, again, as it was close to the skin; is that correct?

A No. I disagree with that. Because I believe when you come --

Q Let me ask you this. When you have a moustache which is an inch below, it is not a compelling necessity, is it, Chief, to expect that an individual who would grab onto that moustache and cause the type of imbalance that you were talking of before?

A It could be, yes. Because coming below --

Q Let me ask you this, Chief --

MR. SCHULTZ: If your Honor please --

THE COURT: No.

MR. HARTMAN: I think he should answer my questions.

THE COURT: I think the witness answered.

I think it's just as much how far out the hair is than it is how far down. So that's one of the problems, isn't it?

THE WITNESS: Your Honor, the way I see it, when the moustache comes out past the corner, then on this part it's loose and it can be --

THE COURT: You're assuming it was loose. Suppose it weren't?

THE WITNESS: If it were close to the face and not loose, then I would agree.

THE COURT: I say it's almost as -- the factor is just as significant in how far out it is or how bushy it is and, as you say, as to how far down it is.

THE WITNESS: Yes.

THE COURT: Mr. Hartman is only talking about how far down.

Q Now, Chief, in the Crime Prevention Unit that was testified to before, there are the -- I would say the majority -- would you not say, Chief, the majority of the members do not conform with the rules and regulations as far as sideburns, moustaches and goatees are concerned, which they would have to if they were in uniforms; is that correct?

A I believe that half of the CPU must conform

to our regulations because we do utilize them from time to time in uniform.

Q Okay. And the half that do not, they do not conform, they have longer sideburns and longer moustaches and longer goatees?

A Yes.

Q How long has the Crime Prevention Unit been in existence, to your knowledge? At least five years?

A I would say six or seven years, yes.

Q In the six or seven years, how many -- can you give us specific instances of police officers' complaints that their moustache was pulled and because of that they lost balance and their gun was taken from them or anything else that was in your hypothetical example before?

A I don't know of any.

Q And can you tell me specific examples of anyone who complained that his sideburns were pulled, he lost his balance, lost his gun or anything else in your hypothetical example?

A I have none in my personal knowledge.

Q Can you give me an example of anyone that said that his goatee -- because some of the Crime Prevention Units have goatees -- that his goatee was pulled and because of that your hypothetical example became a reality?

Redican-cross

MR. SCHULTZ: I object on the grounds that there is no testimony that anybody has a goatee.

MR. HARTMAN: Well, I will ask the --

THE COURT: No, I will allow it.

MR. HARTMAN: I think there was some --

THE COURT: I assume the CPU has undercover agents and they are to blend in with the group that they are investigating.

THE WITNESS: Yes.

THE COURT: So if the group has this type of facial adornments, that they would have it if the --

THE WITNESS: Yes sir.

THE COURT: So I would assume that that is probable.

Q Can you give me one specific example in line with the question that I just asked --

A No.

Q Can you give me one example of an individual, again, who complained to you? And I won't repeat the whole question, but to the same effect in compliance with your hypothetical that his hair in the back of his head was pulled, lost his balance, lost his gun or anything else?

A No.

Q And, again, as the Judge asked the previous

14 witness regarding the implementation, I should say the promulgation of this rule and regulation, to your knowledge, it was not so that a person's hair would not be pulled or his moustache or goatee or sideburns, and he would not lose his balance and lose his gun -- that was not the compelling necessity for the original promulgation, was it, Chief?

A I don't know.

Q Has this ever been told to you as the reason why it was promulgated?

A No.

Q As far as the gas mask is concerned --

THE COURT: May I ask this. Before the rule was promulgated, were you asked for your opinion as to the possible hazards of long hair or hair below the midline of the ear or neckline?

THE WITNESS: No, I never was.

Q As far as the gas mask is concerned, prior to being in the position that you are as chief of the -- I am sorry -- assistant chief, deputy chief inspector --

A Yes sir.

Q -- deputy inspector in charge of the two precincts, prior to that time were you in charge of the 5th Precinct?

A Yes.

Q For how long were you in charge of the 5th Precinct?

A About three years.

Q During those -- let me ask you this. During those three years, the 5th Precinct was -- is this correct -- was comparable to the other seven precincts as far as type of complaints that were received, the type of aided cases that you had to respond to? I mean generally those were comparable to the 6th or the 1st or the 8th or 2nd or any of the eight precincts?

A I would say, yes.

Q And during those three years, how many times did a member of the police -- give me a specific case -- use -- actually use a gas mask in the performance of his police duties?

A Only in the 5th Precinct.

Q In the 5th Precinct in those three years?

A None in the 5th Precinct.

Q Now, in the time that you were in the 5th Precinct --

MR. HARTMAN: I have no further questions.

(continued next page)

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q How many times during the years you were the commanding officer of the 5th Precinct was a gun actually used by police officers in that precinct, to your knowledge?

MR. HARTMAN: Can I just have a clarification?

THE COURT: Do you mean discharged?

MR. SCHULTZ: Discharged.

THE WITNESS: I don't remember. But it would be certainly not more than two or three.

Q In what period of time?

A Over a period of three years.

MR. SCHULTZ: I have no further questions.

RECROSS EXAMINATION

BY MR. HARTMAN:

Q Just on the gun, how many times was a gun drawn during those three years?

A I have no idea. But I would say it would be numerous times.

Q Numerous times.

MR. HARTMAN: No further questions.

Just a moment.

RECROSS EXAMINATION

BY MR. HARTMAN (Continued):

Q And certainly the gun was worn all during that time in public view to the citizens?

A Yes.

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q Chief, the tie that you are wearing, does that go around your neck or can you pull it off from the front?

A This goes around my neck, but it's not tied. It hooks open.

Q I see. So that you cannot be garroted or choked by anybody grabbing it.

A No. If you grab this, each piece -- it's like a normal necktie. But it would come apart rather than strangling --

Q I see. Is that also for self-defense?

A Yes, I believe it is. I have been asked about it and I have recommended this type or the type that is now worn that just has a clip on the front and doesn't go around the neck.

Q They are the long-looking black ties which have a clip like a bowtie?

A Black or blue. It clips in the collar.

Q So that if anybody grabs it, it would come off?

A Yes.

Q Now, the same thing with regard to the wearing of a sand brown belt, is that worn by the Nassau County Police Department?

A I believe only on motor vehicle men. And they have a breakaway clip on them.

Q Also that if somebody grabbed the police officer by that belt, the breakaway clip would release the police officer's belt?

A Yes.

Q Is that also for defensive purposes?

A Yes.

Q Yet you may not be able to tell us at this time how many times in the years that you have been with the Nassau County Police Department do you personally know of anyone who grabbed a police officer by his necktie, can you?

A I don't know of any, no.

Q You don't know of your own knowledge how many times a person grabbed a motor vehicle patrolman or a police officer by his sand brown belt so that it would come apart at the clip?

A Not to my knowledge.

Q But those things are given to the police officer for his self-defense, aren't they?

A Yes.

Q So if anybody did grab him by the tie or the belt, it would come apart and that would assure his safety, is that correct?

A Yes sir.

Q By the same token, if he had hair which could not be pulled, even though it may not never have been pulled, the shortening of the hair ensures his safety to a greater extent; is that correct?

MR. HARTMAN: I'm going to object.

THE COURT: I will allow it even though it sounds like a summation.

Q Is that correct?

A Yes sir. I believe so. Yes sir.

MR. SCHULTZ: No further questions.

RECROSS EXAMINATION

BY MR. HARTMAN:

Q I don't want to continue this unnecessarily, but you have been taught that a nose, an ear, the eyes, any protrusion is also a defense tactic to the user? Yet you don't select precinct members who are going to be in the heat of battle, so to speak, by the length of the nose or

the length of their ears or the length of their limbs, do you?

A No sir.

MR. HARTMAN: No further questions.

THE COUPT. Anything further?

You may step down. Thank you.

(Witness excused.)

THE COURT: All right, we will take a five minute recess.

(Recess taken.)

(continued next page)

THE COURT: All right, your next witness, please.

T183 PM

W I L L I A M K A N E, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q You are a deputy inspector in the Nassau County Police Department, am I right?

A That's correct.

Q Are you a commanding officer assigned to a particular precinct?

A Deputy commanding officer of the 7th Precinct.

Q Is that the precinct that abuts on the Second Precinct of the Suffolk County Police Department commanded by the first witness in this case, Inspector McBride?

A First Precinct, Suffolk County.

Q Abuts on the First Precinct?

A Yes sir.

Q So that you have the same type of people residing in your precinct as residing in the First Precinct in Suffolk County?

MR. HARTMAN: I'm going to object to this. I don't know what it means. I don't know how he can answer the question.

THE COURT: Same type. You don't mean the same height, same weight, do you?

MR. SCHULTZ: Same appetites.

THE COURT: In what village is your precinct?

THE WITNESS: From Merrick to Massapequa around the south shore.

THE COURT: And what is it on the Suffolk County side? Is that Bayshore?

THE WITNESS: No. Picks up Amityville. The village of Amityville is immediately east of us.

THE COURT: All right.

Q Inspector Kane, are there any people assigned to your precinct as police officers who wear wigs?

A Yes sir.

Q Do they wear their wigs while they're on duty?

A Yes sir.

Q By wearing their wigs, are they able to conceal inordinate lengths of hair in the back and thus comply with the grooming standards of the Nassau County Police Department?

A Yes sir.

Q Have you had any discussions with police officers in the 7th Precinct and elsewhere in the Nassau County Police Department with regard to long hair?

A Discussions, conversations, yes sir.

Q Have there been any concern expressed to you with regard to the long hair?

A Quite often.

MR. HARTMAN: Your Honor, as before, I would object unless there is some basis shown for some form of proper sampling taken rather than conversations he's had.

THE COURT: I agree. Objection sustained unless you can show the extent ofthe sampling and when it was taken, over what area.

Q Let's start with one example, Inspector Kane.

There was a funeral recently of a slain police officer in Yonkers, Westchester County, New York. Are you familiar with that funeral?

A Farly this week, sir.

Q It was this week. And did any of your police officers or did any police officer of the 7th Precinct attend that funeral?

A Yes sir.

Q Subsequent to that funeral, was there any discussion had between you and him with regard to hair or the length of hair?

MR. HARTMAN: I object to "you and him." I don't know who "him" is.

MR. SCHULTZ: This is sort of like a sampling.

THE COURT: That's right. Overruled on the

grounds stated. You can ask that on cross-examination.

Q What was the comment made by the police officer in question?

A He based his -- he mentioned to me in a conversation that he had observed several of the Suffolk County police officers that attended the funeral of the slain officer and how bad in his estimation they looked.

Q Why?

A Because of hair, long hair and facial hair.

Q Now, were there other conversations had with other police officers with regard to hair, without telling me when and where, but the answer is either yes or no.

A Could you repeat that.

Q Were there other conversations had by you with other police officers concerning long hair and the concern expressed by such police officers with regard to -- with regard to such long hair?

A Yes sir.

Q Can you tell me when and where those conversations took place?

A Not exactly when, sir. Very recently. In places like the coffee room in the stationhouse or in the stationhouse area.

Q When you say very recently, do you mean in the

recent -- inthe last two or three months?

A Yes sir.

Q In the 7th Precinct?

A Yes sir.

Q And what if anything was said in connection with that subject?

A Each time it was an indication that the officer I spoke to felt that a majority of the police officers in the 7th Precinct, or in fact Nassau County did not want or approve of longer hair.

Q Did they say anything with regard to how it would reflect on the image on the police officer if he had long hair?

A They seemed to feel it will effect them on the street as well if they are working side by side with an officer that has long hair.

Q Now, Inspector Kane, have you had any feedbacks recently from women in connection with long-haired police officers?

A Not in my official capacity.

Q In your unofficial capacity?

A In conversation with women who are residents of Nassau County that visited my home one night, yes, there was a discussion.

Q What was -- what if anything was said?

A I recall the conversation, it went to the extent --

MR. HARTMAN: I object to this. Women visiting in Inspector Kane's home are very likely to tell him that they don't like long hair.

THE COURT: It is some evidence. It is not a sampling of an isolated incident or just conversation with two or three or five people.

MR.HARTMAN: Yes, your Honor.

THE COURT: I am particularly curious about whether it can ever be established that the police officers or the population or a segment of the population approves or disapproves. I don't know whether you can -- you can have an opinion that can stand on a sound footing unless it's very, very extensive and cuts across all levels of population, social, economic levels in all areas.

But I will take it. We understand that there is always somebody that disapproves. And that is not a sampling. And I don't know how I can consider a conversation with Inspector Kane with one or two or three or ten women.

MR. SCHULTZ: There might be some people, if your

Honor please, who you might say are opposed to any type of killing and therefore will not permit their wives to wear -- don't wear leather shoes because it comes from a cow and therefore wear sneakers. That would certainly not be permitted. And then sneakers would be permitted in the Nassau County Police Department and they would say that they directed me to wear --

THE COURT: That is a different argument. You are trying to show me first the attitude of police officers and policemen and citizens of Nassau County toward long hair and beards, I assume. I am accepting this evidence because it may very well relate to discipline, to the police have for themselves and for the respect that the people have for the police. Because I think the State does have an interest in presenting authority and presenting an image that is not subject to ridicule. I think that is all in the case.

I just say it's a very difficult thing to bring in because without an extensive and comprehensive survey I don't know how Inspector Kane might talk to certain people.

Now, mind you, he doesn't have long hair and he doesn't have a beard. Now, the women that he meets or the men that he meets, are they inclined to tolerate

long hair?

Well, maybe. But I would think that if we have another segment, police officers who wear long hair and wear beards, they would say, "Well, I spoke to some friends of mine and they approve it. They think it's great."

And, as a matter of fact, they will tell you that they think that Charles Evan Hughes and Abraham Lincoln were great and they all wore beards and they would be honored if they were in the --

MR. SCHULTZ: Thomas Jefferson wore a pony tail.

THE COURT: Well, there you are. But the point I want to make is this. When I have a witness like Inspector Kane, I would be very much surprised if he told me that the majority of people that he spoke to not only approved of long hair, but thought added to authority and dignity.

On the other hand, if Mr. -- I've forgotten the name of the plaintiff here, Mr. McCune, took the witness stand and told me that he spoke to his group, people that he meets and talks with and socialized with, and said they despised long hair and think it's degrading of authority and undermining the authority of the County -- that's what I mean.

I mean how do you bring in a fair sampling.

MR. SCHULTZ: The reason I mentioned Thomas Jefferson, you know, 200 years ago we had one type of attire with the cuffs extending from the --

THE COURT: And the ruffles.

MR. SCHULTZ: And the ruffles, you know.

THE COURT: And they are coming back, aren't they?

MR. SCHULTZ: I don't know. I have short sleeves.

THE COURT: I see it in formal clothes. If a fellow took his jacket off, I'd think he had a dress on.

MR. SCHULTZ: I read something about Marlon Brando goes to a formal with a black tie and dungarees. I don't know how you can do that.

THE COURT: But the point I am making is that it's very difficult to establish the general attitude of the public. And what do we take? The majority.

You know, in this court the majority means futile because the first thing you look for is the minority -- the protection of the rights of the minority.

Substantial majority, when does it reach a point where --

MR. SCHULTZ: Reasonableness.

THE COURT: (Continuing) -- where people start to ridicule the Police Department.

Now, when it reaches that point, I say that we have a severe problem.

Now, we have a real State interest.

MR. SCUHLTZ; Now, you also take the reasonableness of the regulation to see whether or not there is any --

THE COURT: That's right.

MR. SCHULTZ: That's why we are fighting today and last week and --

THE COURT: Listen --

MR. SCHULTZ: Until this case is finished.

THE COURT: Mr. Schultz, I recognize the State has a problem. They are concerned. I don't think there is a lack of good faith on either side here.

The question is, how you deal with it. ANd that's what I am trying to find out, whether you deal with it reasonably.

I know you have a problem. I know that you can't have people just walking around unkempt, tie off, shoes off. You have to have regulations. If you don't have it with the Police Department, God help us. If people

don't respect the authority of the police --

How do you do it?

The other side says, "Well, no. Look, what I am doing does nothing to detract." And I assume they come in with good faith, too.

MR. SCHULTZ: If your Honor please without digressing, I am sure that you would not tolerate a lawyer appearing before you without wearing some type of necktie. I am not talking about female lawyers.

THE COURT: That's a strange thing. You've come to a case in point. I had a very well known negligence trial lawyer come to me when he was in his dotage and he came into Court without a necktie and shirt open.

And the lawyer on the other side was wringing his hands. He thought I would be terribly offended by it. I wasn't.

I would rather someone, you know, came in proper dress. I have the same problem with -- we had a court reporter who had a pony tail. I will tell you one judge threw him out of his courtroom. I didn't think it was my business.

I had girls that came to Court -- our secretaries in a pants suit. And one of our -- one of my associates was horrified. He wanted me to promulgate a rule. I

can't do that.

I think people normally have a sense of decency and self-respect and I don't think they intentionally intend to hurt. And sometimes you get used to things. It's not so terrible.

I'm troubled by this whole thing.

MR. SCHULTZ: Sometimes you have to regulate self-respect by a rule.

THE COURT: Oh, listen, the right to make rules is unquestioned. But they must be reasonable and serve a purpose.

MR. SCHULTZ: That's right.

THE COURT: That's why we are here.

MR. SCHULTZ: Yes, that's why we are here.

THE COURT: All right. I don't know. I have been trying to think of how you could accomplish your purpose and at the same time give those that want beards and long hair -- and their beards -- maybe it's the way some of them wear them. Maybe that's what we are really talking about, and we don't realize it. I can think of men who are perfectly well groomed -- I might tell you -- and I may have told you before -- I had an applicant for a law clerkship, and a friend of his came to me with the application. It was a male law

clerk; and he wanted to know whether his friend could come in with a beard. And he was ready to shave it off. I would feel terrible if he shaved his beard off for me.

I said, "No." If it was my choice, I'd rather he didn't have a beard, but he came in. Very nice. Very nice beard. Attractive. Always clean, nice looking.

I have seen some fellows without beards and short haircuts that look dirty and filthy.

No, I mean this very seriously. We have a serious situation here.

I am not for beards or against them. I do think that the county has a right to be concerned about appearance and how it looks. Sometimes people represent the Government -- and I am horrified. I wish they wouldn't. And that's really what we are talking about.

I don't think the county wants to deprive you of any rights. And I think on the other hand you feel they want to deprive them of rights. And the Courts have said you have certain rights in your own appearance. But I don't think any of you who are talking about hair length would also say that you would like to come to work as police officers with your badge pinned anyplace you wanted to, with red pants and a blue jacket.

And all of you are shaking your heads. Of course, all of you would be horrified. You wouldn't want that.

But, you see, to the State, to the County -- and they haven't told me anything that I don't know about. But I feel that that is what they are afraid of. That really you are out of uniform when you don't have strict accordance with their hair grooming.

I don't say they are right in what they are saying. I am just saying that's their concern.

Now, we are all trying to do the same thing. We all would like to tell the public that we are police officers and have the highest respect for ourselves as police officers. You all want that. There are very few that want to destroy the authority of the Police Department. I don't think that anybody who's talking about long hair wants that either. But that's what the State is worried about. I don't know whether their fears are real or not. They are probably exaggerating to a certain degree. I don't know how much.

And your fear is that they are invading your privacy. That's what they are really trying to do in exercising their duty, which is probably also exaggerated.

There is probably a lot of good faith on both

sides and a lot of suspicion on both sides. So I have to try to find a fair ground.

I can see where a gas mask could prove dangerous and fatal. And on the other hand at this point it seems like a theoretical argument because it doesn't happen too often.

Well, these are things I have to think out. Is that a reasonable ground or isn't it?

Chief Redican's concern, it's there in certain instances. Maybe rare instances. A police officer who has longer hair is more subject to offensive tactics -- they call them defensive tactics -- by the criminal than one who is bald.

Certain advantages to being bald. The women don't think so, but there are advantages particularly when you are in the Police Department.

But is that a reasonable limitation? I am thinking outloud. A fellow who complies with the regulations may be just as subject to the same kind of attack because his hair is growing out this way instead of down.

So these are -- there are a lot of complex problems. We are talking about first the authority that everybody wants exercised and we are also talking about the right of privacy. You want to dress the way you

want to dress. And as most rights in this Court are determined, we must find how we can resolve the conflict of the rights.

Sometimes one must give way. Sometimes the other must give way. And sometimes there is a compromise. But this is what we deal with every day. It's very rare in [illegible]'s Court that one fellow is one hundred percent right and the other fellow is one hundred percent wrong. It really doesn't happen. That is what litigation is about.

MR. SCHULTZ: On the subject of gas masks, I'd like to call to your Honor's attention that I have a Dr. Erwin, who resides in Maine, who could not be here today -- and I don't know whether we would even be here today because when you talk about a lawyer who is in his dotage, I haven't reached that age yet, but I think after forty-three years at the bar I might be able to say to you with all due sincerity, when it gets to be about 5:00, even 4:30, that maybe I am a little tired and I can't [illegible] longer.

THE COURT: Well, sit down and ask your questions from a sitting position. I don't mind that.

MR. SCHULTZ: Well, I --

THE COURT: Listen, the case is --

MR. SCHULTZ: But I would like to reserve my right to bring him in.

THE COURT: Maybe Mr. Hartman will agree to his affidavit or a stipulation as to what he would testify to. Otherwise I have to hear him if you think it's important.

MR. HARTMAN: I am sure we can work something out. I assume I know what he is going to --

THE COURT: Let's try to finish today. Because after today I then have to find another day when I have a few hours. I just can't find the time. That's all.

DIRECT EXAMINATION

BY MR. SCHULTZ: (CONTINUING)

Q Tell us now about --

THE COURT: Incidentally, I used to think forty-three years at the bar was -- well, few attained it.

MR. SCHULTZ: It doesn't happen overnight.

THE COURT: Well, I have been a lawyer for forty years, too, and I think I am just starting. So that's not much.

MR. SCHULTZ: Thank you, your Honor.

THE COURT: You're still a young fellow. You can take it.

MR. SCHULTZ: Thank you. We have a judge in this court who called me a kid.

THE COURT: There you are. See what I mean.

DIRECT EXAMINATION

BY MR. SCHULTZ: (CONTINUING)

Q Inspector Kane, tell us about the reaction you said you received from these women who visited your home on the -- in a discussion with regard to long hair.

A The discussion went along the lines of speaking about a recent prowler call that happened at one of the women's houses. And they also had just formally, just before that finished the discussion on the move by the PBA to remove the restriction on appearance with regard to the hair. And two of three of the women were of the impression that if they had a problem with a long-hair type prowler or someone around their home causing some problem and a policeman showed up at their home whose hair was as long if not longer, they would sort of lose confidence in the person they sought for help or for assistance.

(Continued on next page.)

R4 fls

P4T1

Q Now, would you say that it is necessary from your many years of experience with the Nassau County Police Department -- and I don't recall whether you told us how many years you have?

A Twenty-one years.

Q That after twenty-one years, would you say that it is necessary that a police officer present a neutral appearance while in uniform and be viewed as an impartial symbol of authority.

MR. HARTMAN: Objection. An impartial --

THE COURT: I don't think this is an opinion that the police officer can express. I don't think that is along his expertise. Probably you need a sociologist for that. And I don't know whether I'd believe him.

MR. SCHULTZ: That's right. I'm glad you added the last part.

THE COURT: These are such difficult issues to really -- first to put your finger on and then to find -- try to define that.

Just think of what you asked.

MR. SCHULTZ: Judge Douglas in his decision in the Supreme Court of the United States quoted language almost similar to that with regard --

THE COURT: Nobody reviews Judge Douglas' opinion.

That's why he can say anything.

MR. SCHULTZ: I think he's well respected though.

THE COURT: I don't know a Supreme Court Justice that isn't. And we have had a hundred of them. Every one of them are men of learning and entitled to our respect. But I say that Justice Douglas can say it realizing that no one can review it. But that doesn't mean that no one can dispute it. I dispute it.

DIRECT EXAMINATION

BY MR. SCHULTZ: (CONTINUING)

Q Now, in your opinion, Inspector Kane, from your conversations, from your observations, from your experience of twenty-one years in law enforcement in Nassau County, would you say that it is necessary for the public to have respect for a police officer?

A Very important.

Q And would you say that the wearing of hair, long hair or beards or mutton chops as was described at an earlier session would detract from that respect?

MR. HARTMAN: I am going to object.

THE COURT: I will allow it --

THE WITNESS: In my opinion --

THE COURT: (Continuing) -- for what it is worth. I am not sure. But the police officer has been in the

Police Department for so many years.

THE WITNESS: In my opinion, yes.

THE COURT: And probably has a feeling in his experience and perhaps has enough knowledge of experience.

MR. SCHULTZ: All right, I have no further questions.

MR. HARTMAN: May I have one moment, your Honor? I have no questions.

THE COURT: Thank you. You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. SCHULTZ: Chief Inspector Herman Maickel.

H E R M A N M A I C K E L, called as a witness, being duly sworn by the Clerk of theCourt, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Chief, you are the Chief Inspector of the Nassau County Police Department?

A That is right.

Q What does that title mean?

A The commanding and ranking officer of the uniform force and detective division. There is a ranking officer under the position of commissioner.

Q In other words, except for the Commissioner of Police, you are the ranking officer, top officer in the Nassau County Police Department?

A That's correct.

Q How many years of service have you had with law enforcement?

A In law enforcement all together?

Q Yes.

A Forty-five years and three months.

Q Of the forty-five years and three months, how many years have you had with the Nassau County Police Department?

A December 31, of this year will be thirty-nine years.

Q How old are you, Chief?

A I am sixty-seven.

Q Chief, have you had an opportunity to take a sampling of any portion of the community of Nassau County and elsewhere with regard to the attitude of the general public toward long hair or beards worn by police officers?

A No. I have had some comments on --

MR. HARTMAN: I am going to object. His answer is, no, and, I take it, is responsive.

Q Have you had any unsolicited comments?

A Definitely.

Q With regard to the long hair and --

A I certainly have.

Q And beards?

A Yes.

Q Where did the -- where did you obtain these unsolicited comments?

MR. HARTMAN: I object. Unsolicited comments, he doesn't obtain. Either it's in the sampling --

THE COURT: No, I will allow it.

You can cross-examine the inspector.

THE WITNESS: No, I have lived in the same village for fifty-one years. We have a large family. I was on the local force there for six and a half years before coming to the County.

And I am well-known and know all the other people there. And people stop me on the street, they know what my profession is and they would comment on it.

I have had occasion to meet with the church down there by the Senior Citizens group. And one thing that I was astounded at, was that some of these people, particularly the women, were almost -- had a morbid fear of walking down the avenue, which at this particular street was Tulip Avenue where the young people hang

out. And they expressed themselves -- people with the long hair.

Q What was their expression?

A They were fearful --

THE COURT: Excuse me, were they talking about these people? Were they talking about police officers' long hair?

THE WITNESS: No, generally. General.

The avenue is a congregating place. There is a local police precinct. It's a congregation of youths.

THE COURT: What village?

THE WITNESS: Floral Park And they -- this street leads right to the church. And they said that they had a fear walking down. They go to church at night with these long haired people around, what they represent. To me it intimated that it represented something that was illegal, something criminal and they were afraid to go near them.

Q Do you have reason to believe that in connection with such complaints that the police officer in uniform was dressed with his hair the same way they would have the same morbid fear of the police officer?

MR. HARTMAN: I object. This conclusion I don't think is -- it's based on some conversation with -- I

have nothing against church groups, but the conversation well --

THE COURT: I'll sustain it as to form.

Has anybody expressed disapproval of police officers in long hair?

THE WITNESS: Not to say morbid fears. They have said -- again, this is friends and neighbors.

Q In what way, Chief?

A In some civic association meetings I have attended, they had expressed the -- the fact that they have been subjected and exposed through the television media and news media and newspapers of the police in New York City -- I hate to say this being a -- being in law enforcement -- but they said, "I hope that you do not let your department go and degrade themselves or look as hippy as these creeps do."

THE COURT: Did you ever have any favorable comment or comments that did not disapprove of police officers with long hair or beards?

THE WITNESS: Any favorable comment? No, I haven't.

THE COURT: Or do some people say, "It doesn't matter."

THE WITNESS: No. I think those that picked me out are the ones that have unfavorable comments. And I never had anyone to say favorable comments about it.

Q How many Police Departments are there in Nassau County?

A There are twenty-four besides the Nassau County Police Department. Twenty-five with the Nassau County Police Department.

Q But the majority of the area patrolled in Nassau County is by the Nassau County POlice Department?

A Nassau County POlice Department.

Q And the other twenty-four are from local villages?

A Local village departments.

Q And would you say that a police officer can wear any color shoes he wants?

A No. Definitely not.

Q What color shoes must he wear?

A He must wear a moderate black shoe.

Q Would you say that almost all of his attire, except for his underclothing, is regulated by police regulations?

A It is. As far as the uniform force, definitely, it is.

Q And is it your feeling that the type of hair either on the back of his head or on his face, the side of his face or the front of his face is part of an extension of his uniform?

A It would be as far as his dress and appearance.

Q And do you have reason to believe that there is a real interest on the part of the Police Department to maintain the respect of the general public in the police officer by regulating the length of his hair?

A This is the goal of the administration of the Police Department for the respect and confidence of the public within the people that serve it. We have got to present a good image, a picture for them, so they will give us their confidence, give us that backing.

And as it is today -- if I may use the expression -- it is a tough job to protect these people. And we are trying to do that and gain that confidence and that respect from them.

Q And except for -- I will withdraw it.

MR. SCHULTZ: No further questions.

THE COURT: Mr. Hartman.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q Just two questions, Chief.

Are you, after your forty-five years -- and I do respect you. I am not saying this in any way facetiously. But in your forty-five years of experience, are you able to identify, absent the uniform, absent the shoes, absent the badge, absent the police car, whether a person is a police

officer or not because of the length of his hair.

A You mean as compared to a civilian, a man in civilian clothes?

Q Yes.

A If he is in civilian clothes, I cannot identify him, no.

Q And what do you look for when you determine whether a person is a police officer or not?

You look at his uniform? You look at his uniform?

A I'd say the general picture.

Q Chief --

A The uniform is the attractive --

Q Let me --

A The shield, the general appearance, what authority he commands, what respect he commands. This is my opinion of what I look for in a police officer.

Q Now, in your experience with the questions that were asked you by these different groups, has anyone every brought to your attention that they neglected or stopped slower, let's say, for a police officer with long hair than a police officer with shorter hair? Let's say on a traffic situation.

A They stop what?

Q Let's assume someone being stopped for a traffic violation. Has anyone ever brought to your attention in these

conversations that they didn't respond as quickly to a police officer because he had longer hair as compared to shorter hair?

A I have had complaints that the police officer picked on them because they had longer hair.

Q No, not picked on. Did you ever have any experience -- did anyone ever tell you that they responded less quickly to a police officer because of the length of his hair?

A In our department we haven't got that condition.

Q From their comparison in New York, when these conversations -- when they told you about the New York City Police --

A The comparison with New York was just what was depicted before them. They were exposed to it in the news media. Nothing about any personal contact with them.

Q And certainly at no time did they tell you, "I would not stop as quickly for that individual because he has longer hair."

A These people who have spoken to me --

Q Chief, was --

A I am trying to answer your question.

Q Just answer this question. Was this ever told to you?

A I beg your pardon.

Q Was this ever told to you? Was it ever related to you in any conversation?

A In this aspect that they would have less respect for the man who stopped them?

Q No. They would not obey the order of that police officer as quickly.

A Nobody ever expressed that opinion.

Q Did you ever -- was it ever expressed to you that if someone needed assistance, that they would select the officer with the shorter hair before the officer with longer hair?

Has that ever been --

MR. SCHULTZ: I object to the form of the question.

THE COURT: Overruled.

THE WITNESS: I beg your pardon.

THE COURT: Can you answer that question.

THE WITNESS: May he repeat it?

THE COURT: If a citizen needed assistance, would he prefer -- did anyone ever tell you that he would prefer an officer with shorter hair than longer hair?

THE WITNESS: No, your Honor. He never did.

Q And certainly you know of no instance in your conversation with the New York City Police Force where someone has refused the assistance of a police officer because of the length of his hair?

A My conversation with the New York City Police Force --

Q Your work -- I am sure you talked to the --

A Do you mean a conversation about the New York City Police Force?

Q Either that or conversations with the New York City Police Force, the commanding officer.

THE COURT: There is no indication --

MR. HARTMAN: All right.

Q In the conversations with the individuals at Floral Park?

A The conversations -- just as I expressed them --

MR. HARTMAN: No further questions.

MR. SCHULTZ: No further questions.

THE COURT: Do you know of any survey that was made about reactions to this? Any scientific investigation or broad study?

THE WITNESS: I can give you some history on why this regulation was put in.

THE COURT: Did you have anything to do with

promulgating it?

THE WITNESS: I did at the time.

THE COURT: Sure.

THE WITNESS: We had in our rules and regulations that a man must be clean shaven and well groomed. And there was about six or seven years that this new style, this new mode, this new aspect has come into being. And we got concerned first for appearance, for safety as far as the men were concerned. As far as the beards being a target and as far as maybe being detrimental to the performance of their duty or being a hindrance to their safety before we promulgated this order.

I believe we contacted possibly eighteen or twenty police departments in the country to get their standards and their feelings on them so that we would not ordain something that was arbitrary. We wanted to get it as logical and as reasonable as we could within keeping the look of the officer, the respect of the public, and being the safeguards to them, and not a hazard.

And that was the basis behind it. And this was not done arbitrarily. I believe we had under study I would say at least nine to ten months before we came out with a regulation where at this time instead of say-

ing grooming, we had tried to regulate as to the length of the hair, the sideburns and so forth.

THE COURT: But the study concerned itself with regulations in some other eighteen Police Departments?

THE WITNESS: That's right. And their experience with it.

THE COURT: What did their experience consist of? There was public reaction?

THE WITNESS: Public reaction and as far as safety and what they thought and what they regulated for their people.

And, again, what they regulated for their people, they stated -- or we believed that this was in accord to what the people of their community will accept.

THE COURT: Was the study in a formal report or just --

THE WITNESS: Communications. Just communications. Or some -- if I remember, some did send us copies of their rules and regulations and how they prescribed them. Because we felt we couldn't just go out with a blanket rule or regulation and say that you should not have long hair or long sideburns. We felt we had to promulgate something where the man knew what was required of him and what we could enforce.

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q Then you say that after that study and the promulgation of the rule and regulation, did you find that the regulations that were promulgated and are now referred to for convenience as grooming standards were fair and reasonable?

MR. HARTMAN: Objection. That is what we are here for.

THE COURT: Objection sustained. That is what I have to find.

Q Would you say that there was anything arbitrary about promulgating those rules and regulations?

MR. HARTMAN: Objection.

THE COURT: Objection sustained. That's a conclusion of law.

Q And would you say, then, that there was a compelling necessity for you to work on the regulations at the time that they were being studied?

MR. HARTMAN: Objection.

THE WITNESS: In our opinion, it was.

THE COURT: Same objection. I know another witness answered the question, but there was no objection before. There is now.

Any recross?

MR. HARTMAN: No, your Honor.

THE COURT: All right, you may step down.

THE WITNESS: Thank you, your Honor.

(The witness excused.)

J A M E S R. K E T C H A M, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULMZ:

Q Commissioner Ketcham, you are the First Deputy Police Commissioner of Nassau County; is that correct?

A I am.

Q In addition to being the First Deputy Police Commissioner, in the absence of the Police Commissioner from time to time, if that becomes necessary, you are the Acting Commissioner of Police of Nassau County; is that correct?

A That's correct.

Q In addition to that, are you also a member of the bar of the State of New York?

A That's correct.

Q Now, Commissioner Ketcham, prior to your becoming the First Deputy Police Commissioner of Nassau County, were you actively engaged as a Nassau County Police Officer starting with the rank of patrolman and ending with the rank of inspector

or deputy inspector, or deputy chief inspector?

A Through my entire adult life, a period of twenty-six years.

Q What was the highest range you received prior to becoming first deputy police commissioner?

A Deputy Chief Inspector.

Q So that you have been a police officer, as you indicated, almost all of your adult life?

A Thats correct. That is true.

Q Commissioner Ketcham, were you a member of the Nassau County Police Department at the time that a study had been made in order to promulgate the group standards which is the subject of this lawsuit?

A I was.

Q Now, did you hear testimony given by Chief Inspector Herman Maickel?

A I did.

Q With regard to this study that had been made of different police departments throughout the United States?

A I played a part in it.

Q All right. Now, is there anything that you can add to the testimony given by Chief Maickel with regard to the study and the reason for the promulgation of the rules and regulations dealing with grooming standards?

A At the risk of being repetitious --

MR. HARTMAN: I'm going to object unless the witness was personally familiar with the particular aspects of the study to which he is testifying and not some conclusion as to which we have no documents.

MR. SCHULTZ: He said he played a part.

MR. HARTMAN: I don't know what it means?

THE COURT: I will allowit.

We are just talking about the study of some eighteen --

THE WITNESS: We got responses from approximately eighteen.

THE COURT: All right, I will allow it.

Q What can you add, Commissioner Ketcham?

A I can indicate, as the Chief Inspector indicated, that the primary considerations were appearance and the safety factor, we knew it was becoming a problem because long hair, hair fashions were changing, new fads were in vogue, and police officers did not have guidelines. There were no specific regulations.

And being individuals they exercised their own discretion, sometimes to extreme. Our superior officers and our police officers had no definite guidelines to follow. There was one obviously needed. WE wanted to be fair. We wanted

to be impartial. We wanted to be reasonable. So we started by conducting a survey throughout the United States to determine what problems the other major departments faced in this area legally and practically and also what guidelines if any were promulgated.

We received responses from approximately major departments. And some of them did relate legal histories where they had to go to Court to defend their right to promulgate their guidelines, particularly from the State of California. Some of the major California Police Departments had already gone to Court on the administration's prerogative to establish guidelines inthe area of grooming and was upheld by the California Courts.

So we felt we had a legal right and a legal basis. And we also felt as a result of the survey that there was a definite necessity for grooming standards. We had to draw a line of demarcation.

So what should our grooming standards be?

We evaluated the grooming standards of the other departments and we tried to take a middle of the road -- strike a middle of the road balance.

And this is what we feel we have done. We haven't gone to one extreme or the other extreme.

Q Commissioner, I appreciate your indicating the

desire on t he part of the department to be fair and impartial and middle of the road in promulgating these rules and regulations.

At that time were you working with the Commissioner of POlice who was then the Commissioner of Police of Nassau County?

A At that time it was toward the end of '68 in the beginning of '69. I was serving as a Deputy Commisioner since 1966.

Q So that would be Francis D. Lormy?

A Yes.

Q And you were working with him as his First Deputy?

A I was.

Q So you did play an active part in making the survey, obtaining the responses and in promulgating the rules and regulations testified to by you and by ChiefMaickel?

A True.

Q Commissioner, there was some conversation given by Captain Carney with regard to the Crime Prevention Unit, referred by him as the CPU. Do they have a commanding officer?

A That unit is directly under me. They do have an inspector who serves as the Commanding officer on a daily basis. But in the chain of command, it is directly under my

office.

Q In other words, that particular unit is under your jurisdiction?

A That's true.

Q So that in effect while as the First Deputy Police Commissioner, you might be Commanding Officer over all other Commanding Officers and this unit is under your jurisdiction in some other manner than just being as First Deputy Police Commissioner?

A True.

Q Is that correct?

A Yes.

Q Now, the members of the CPU, how many are there? Do you know?

A Approximately 153.

Q Of the 153, do they work separately or in teams?

A Usually in teams of two or three.

MR. HARTMAN: I didn't hear that.

THE WITNESS: Usually in teams of two or three, depending onthe nature of the assignment.

Q And of the -- if they are working in teams of two's or three's, is one of the two or one of the three or two of the three ever clean-shaven?

A Yes. As it was testified by one of the previous

witnesses, approximately 50% of the members or personnel in the Crime Prevention Unit must comply with the grooming standards in the event that their services are needed in uniform.

So there is no hard and fast rule. I would say nine times out of ten there is an officer in one of those teams assigned to one of those units who does meet the grooming standards.

Q So that if it was necessary for that team to combat some noxious fumes or make use of tear gas and therefore make it necessary to wear a Scotpak or a gas mask, at least one or two of the team would be available for such use.

MR. HARTMAN: Objection.

Q Of availability.

THE COURT: May I have the question, Mr. Barbella?

(Record read.)

THE COURT: Doesn't sound like a question to me.

Q Commissioner --

THE COURT: Will you rephrase it.

MR. SCHULTZ: Yes.

Q Commissioner, one or two members of the team was clean shaven and a gas mask or a Scotpak was required, would you say, then, that that person who was clean shaven or those persons who were clean shaven could wear the gas mask?

A Yes.

Q With safety?

A Based on the testimony of experts in our findings.

May I point out one other thing? The reason is -- is it all right?

THE COURT: Sure.

THE WITNESS: All right.

The reason that these masks or this equipment assigned to these units is placed in these vehicles is not solely for the use of the members who operate these vehicles. The Crime Prevention Unit is a County-wide unit. These patrol vehicles are on patrol throughout the entire county. So the purpose is principally availability, meaning that if this type of equipment -- and they carry other emergency equipment that is not usually carried by a regular uniform patrol vehicle. But if this type of emergency or protective device is needed at a particular scene, the Crime Prevention Unit is in a position to immediately respond and readily have the equipment for the personnel who are ultimately going to use it.

So that that equipment being assigned to that vehicle is not strictly for use by members of the Crime Prevention Unit.

THE COURT: Are the Uniform police trained in the

use of gas masks?

THE WITNESS: Our uniformed police are.

THE COURT: Just one witness is testifying.

THE WITNESS: Based on my knowledge, your Honor, yes. It is included in our recruit training.

THE COURT: Can you tell us how often it is used? Do you have any statistics?

THE WITNESS: No, I don't.

THE COURT: Can you supply it? Do you have any statistics someplace?

THE WITNESS: We could survey it if necessary. I don't know if we recorded -- I don't really know.

We know that equipment has been used. We know that the equipment is always available. We know the equipment has been called for. Not being used necessarily, but on the possibility thatit might be needed.

THE COURT: All right.

MR. SCHULTZ: I have no further questions.

THE COURT: Mr. Hartman?

MR. HARTMAN: I have no questions.

THE COURT: Thank you. You may step down.

Do you think you could supply the statistical --

THE WITNESS: We will attempt to.

THE COURT: On the number of incidents in which

gas masks have been used throughout the County and the times -- the number of times used by uniformed police officers.

MR. SCHULTZ: May that include, your Honor, the times when they were called for.

THE COURT: Sure. Give me as much information as you can. Serve it on Mr. Hartman.

MR. SCHULTZ: Surely.

THE COURT: And if he disputes it, I may have to have a hearing.

Maybe you ought to show him the basis of it and the method, the figures, and the method of how you established the figures. And then if he agrees, we will make it part of the record.

MR. HARTMAN: Can I ask one question of the Commissioner?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. HARTMAN:

Q From the time a member goes through recruit training until the time he retires fromthe Police Department, say, twenty or more years thereafter, how many times does he get instructions in the use of the gas mask?

A I can't answer that.

Q Isn't it a fact, Commissioner, that he never does?

A I can't answer it.

Q Well, you know, of your own knowledge, of knowing when a member has ever been instructed in the use of gas masks from the time of recruitment until the time of retirement?

A What was the question?

Q Do you know of any time, to your knowledge, that a man was instructed from the time of recruitment until the time of retirement?

A I know it is part of the recruit training.

Q From that time to the time of --

MR. SCHULTZ: This sounds like it's more than a question.

Q From the time of the recruit training until twenty years when he retires, do you know of your own knowledge when this has been done?

A No. Unless it's a specialized unit.

MR. SCHULTZ: Your Honor, I have a Doctor Carl Irwin who is in the -- he is a neurosurgeon who has spent more than forty-three years, as I understand it, with the Fire Department. He is a member of the National Fire Protection Association, and he practices medicine

at 336 Mount Hope Avenue, Bangor, Maine. And I can have him available at any date that your Honor fixes.

THE COURT: My suggestion is that either you get a statement or affidavit, show it to Mr. Hartman, give him a chance to go over it with his expert. And if his expert would agree with the -- what Dr. is that? Dr. Irwin?

MR. SCHULTZ: Irwin I-r-w-i-n.

THE COURT: We may avoid bringing him in and make it part of the record.

MR. SCHULTZ: That's perfect. Surely.

THE COURT: Do it as soon as you can.

All right, let's get this matter decided.

MR. SCHULTZ: Okay.

THE COURT: All right.

(Witness excused.)

MR. HARTMAN: I would have the opportunity I assume, if I have to -- if Mr. Schultz consents to it. to supply an affidavit from my own expert.

THE COURT: We will see what he says about it and then you can submit it.

MR. SCHULTZ: I haven't rested yet. May I have one minute, please?

THE COURT: Yes.

V I N C E N T R E D I C A N, having been previously duly sworn, testified further as follows:

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q Chief, you understand you are still under oath?

A Yes.

Q Chief, would you tell his H onor whether or not there is any training given to a young recruit or to other members of the Department even after they have been on the force for some time in regard to the use of gas masks?

A Yes. During the recruit training there is a section devoted to tear gas, its effect, gas mask training, how to put it on, how to make sure you obtain a proper seal so that we can close off the external portions of the gas mask, and there is a strap around your face, and showing the proper seal.

And other than that, in -- I think from 1965 through '69 or '70, we ran riot training schools in the Department for every man in the Department starting with the four day school. And after everybody went through that, we came back for a two day school with every man in the Department. And then a one day school for every man in the Department with the exception of the men who were physically disabled, heart condition, bad back, that sort of thing. And in most of the

cases the men were sent out to the range as observers, although they did not participate.

There was a time in -- probably in 1968 or '67 where the Department got close to a thousand new gas masks. Now, everyone of those gas masks were tested by putting the same number of men through a tunnel that we have on the range where the targets go down. Four tear gas grenades were dropped into the tunnel and all the men in the class -- generally, 50 -- 48 to 50, were sent through that tunnel to test the effectiveness of the gas mask. And at which time we found two defective masks.

But thetraining I believe is constant in the training bureau with recruit training. And I am not involved with it anymore. So in-service training I really don't know. But every man on this job, to my knowledge, has been put through tear gas training. And tear gas training -- this was my subject that I instructed.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MR. HARTMAN:

Q For how long were you a police officer before you came to the higher ranks?

A I made sergeant after -- I think after eight years and lieutenant.

Q During those first seven years, aside from recruit training, how many times have you trained in the use of gas masks, the wearing of gas masks?

A At that time we weren't -- our recruit school ran three weeks as opposed to fourteen weeks now. The training is much greater today than it was in those days.

Q Since 1970 how many times have there been in-service training for police officers in the use of gas masks?

A In-service training? Well, as I say, I'm not involved with the in-service training, so I don't know. I don't know to my knowledge.

MR. HARTMAN: No further questions.

THE COURT: Anything further?

You may step down.

THE WITNESS: Thank you.

(The witness excused.)

THE COURT: Is that the County's case except for Dr. Irwin?

MR. SCHULTZ: Except for Dr. Irwin, that is the County's case.

THE COURT: All right, Mr. Hartman.

MR. HARTMAN: Shall I begin?

THE COURT: Yes.

MR. HARTMAN: I call Dr. Martindale.

D A V I D A. M A R T I N D A L E, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. HARTMAN:

Q What is your profession, Dr. Martindale?

A I am a practicing clinical psychologist and associate professor of psychology at Nassau County College.

Q For how long have you held the present position you have in Nassau County College?

A Eight and a half years.

(Continued on next page.)

Q What are your credentials? What background do you have and what training do you have in the field of clinical psychology?

A In clinical psychology, I have served the formal two-year internship as required by New York State law, and informal training on a continuing basis, meaning I still receive what is referred to as supervision on a twice a week basis, meaning I confer with other therapists who have been in the field for a considerable length of time and so on. Essentially, that's it.

Q What school did you graduate from?

A I received my Ph.D. from City University.

Q And in relating to social psychology or clinical psychology, have you had any training in those fields or --

A I have training in experimental methodology prior to getting my Ph.D. I received my Master's from Queens in experimental psychology, which includes the conducting of experiments or any kind of research dealing with the area of psychology.

Q Would this relate also to what is commonly called poll taking?

A Yes. And I have -- I have also done considerable research on the topic of poll taking, most of which has been

taken since my doctorate degree at Stonybrook.

Q Would you tell us what that research consisted of?

A Well, basically, the one research project that I was most interested in and intimately involved with was one in which I co-authored. It was a project dealing with the tendency of poll respondents to give to the poll taker, the answers which they felt the poll taker wanted to hear.

Q And in your position at Nassau Community College, do you have any other assignments concerning psychology and concerning the students at Nassau Community College?

A I'm not certain if I --

Q Relating to certain testing you have made of the students and the student population that you have taken in the past.

A If you are referring to our recent poll with regard --

Q Or any other poll that you had previously taken.

A I haven't ordinarily done any research with my own students in terms of poll taking. Precisely because of the problem that poll takers -- well, they tell you that poll respondents tell you what you want to hear.

Q This is what I mean. In other words, the

poll is in a wider spectrum rather than the students to whom you relate.

A Right.

Q Now, I'd like to relate back to certain testimony of Inspector McBride. You were present in the courtroom when he testified approximately -- I am sorry -- on September 16, 1974, were you not?

A Correct.

Q I'd like to ask you your responses to certain statements that Inspector McBride made.

Now, first, Inspector McBride testified regarding the --

THE COURT: Suppose you give us the page.

MR. HARTMAN: Page 17.

THE WITNESS: I think it's 19.

Q I will read it to you.

THE COURT: 19.

Q No. We will start on page -- all right, page 19.

Page 18, where Inspector McBride spoke of citizens coming to him and relating their distaste as the appearance of the Suffolk County Police Department in that they don't like uniformed police officers anymore. And then Inspector McBride testified to certain statements that the --

these individuals made regarding the grooming and the lack of a sharp department and so forth.

Can you give us your responses regarding this?

MR. SCHULTZ: If your Honor please, I object to the form of the question. I don't understand what he means, "can you give me your response," with regard to the --

Q Your reaction, I would say.

MR. HARTMAN: That is a better way.

MR. SCHULTZ: Unless I also object.

THE COURT: Can you express an opinion as to why the responses that Inspector McBride got as set forth on page 18, where the citizens came up to him and expressed distaste at the appearance of the Suffolk County Police and said something derogatory about police officers wearing long hair --

THE WITNESS: The basic issue involved --

MR. SCHULTZ: If your Honor please, I would like to voice one objection, because while Dr. Martindale -- if I am to refer to him correctly -- said that the poll taker usually gets the answer he is looking for. I don't know whether or not the testimony on page 18 was the taking of a poll --

THE COURT: No.

MR. SCHULTZ: -- by Inspector McBride.

MR. HARTMAN: I never referred to --

THE COURT: It doesn't have to be. I think the objection would be valid if it was indicated that Dr.Martindale has not assumed the appearance of Inspector McBride and the circumstances under which would make it conducive to the favorable response he is talking about. So I think it ought to be clear that Dr. Martindale knows the circumstances under which the responses by the people generally were given to Inspector McBride and let him tell us what circumstances he thinks are -- would make a favorable response --

MR. SCHULTZ: I might also --

THE COURT: -- evident.

MR. SCHULTZ: I'd also further object on the grounds that unless Dr. Martindale can tell us that he spoke to the same group of people --

MR. HARTMAN: I don't know who the group of people are.

THE COURT: I will allow it.

Q Will you talk up a little bit?

A Yes. The basic issue involved, whether it has to do with asking specific questions or getting -- as

the phrase has been used, unsolicited comments, is still the same if we assume hypothetically that the cases were to be decided today in favor of the Nassau County PBA, I can assure you, when I go home tonight and people drop over to find out how things went, the response would be dramatically different from those that Inspector McBride received.

If people went to his house to find out how the case went -- if the case went in our favor, the people dropping over in my house would say, "Great. They finally got rid of that ridiculous regulation." People dropping over to Inspector McBride's house would be saying, "Boy, the whole department is going downhill and it's going to be a dandy."

But the point is that neither sample is valid. And the observations that have been made by Inspector McBride and others -- and the only reason we focus on his testimony was because he was the first and it's already in print.

THE COURT: I had no knowledge that you were going to testify as a clinical psychologist, sometimes called a sociologist. But I almost said that before I think.

MR. SCHULTZ: You also said you don't have to necessarily believe him.

THE COURT: I beg your pardon.

MR. SCHULTZ: You also said you don't have to necessarily believe him.

MR. HARTMAN: I objected to ---

THE COURT: Sometimes psychology does have some logic to it.

THE WITNESS: Sometimes.

Q Go ahead.

A Would you want me ---

THE COURT: There are a lot of other factors in sampling or poll taking.

THE WITNESS: Yes.

THE COURT: -- the way the question is framed --

THE WITNESS: Yes.

THE COURT: -- what group are you going to --

Q Continue.

A Do you want me to continue with regard to the --

Q All right. The question that on page 15 where Inspector --

MR. SCHULTZ: Excuse me. Your Honor, please, I would like to move to strike from Mr. Martindale's testimony that part where he referred to the regulations as ridiculous.

THE COURT: Well --

MR. HARTMAN: He didn't refer to it.

THE COURT: He didn't say that. He said that certain people -- and let the record show that Dr. Martindale has long hair and a beard and he never would be in compliance with the regulations.

As I understand it, he is saying that people knowing that he would like to hear that because of his appearance and would come to him and say that is a ridiculous regulation.

MR. SCHULTZ: We are talking about what might have been said at his house compared to what was actually said.

THE COURT: Mr. Schultz, I understand the testimony to be an attack on the validity of the sampling that was taken at our first hearing and the sampling taken today. Nothing else. He's expressing opinions saying you cannot use that opinion. It's not valid.

Perfectly proper. Sure.

Q Now, Inspector McBride on page 20 and thereafter spoke of a young man coming to the precinct and making a complaint about a police officer, and the young man saying that the reason he started cursing at the police officer was because he thought he was -- I am summing it up -- he thought he was part of his group and he could relate to him. And,

therefore, he cursed at him because he didn't think he was a police officer or didn't picture him as a police officer.

Do you recall the testimony surrounding that?

A Yes.

Q Can you tell us, please, what your opinion is on this type of testimony and the situation which was described by Inspector McBride.

A Well, my feeling --

MR. SCHULTZ: Excuse me. If your Honor please, I object at this time because that was not a sampling. That was an actual o-currence.

MR. HARTMAN: I am not asking --

THE COURT: But the point is, it was offered as part of the general attitude of the public. This was someone who is under arrest. And it was offered to show that there was an identification -- between the long-haired individual and the police officer.

I think your argument would have been that we should be able to identify police officers from long-haired citizens. And what the expert opinion being offered -- except that assumption isn't valid either. He may have told that to the police officer for another reason.

Q Let me give you the exact language.

A I think I --

Q The exact language used by Inspector McBride was that, no, he didn't look like a cop with the Fu Manchu mountache and the long hair. He looked like a guy rapping with me.

And based on this, the summons led to a summary arrest because of profane language and he said, "I didn't recognize him as a cop."

Will you please respond to that?

A Yes. I think that Inspector McBride is suggesting that he takes the youth's statement at face value. And that in fact the reason that he cursed at the policeman was because the policeman had sideburns and so on.

I don't think that he is being critical enough of what really took place. I think if I were a youth pulled over for speeding and for one reason or another lost my head and ended up cursing at a cop, and then that police officer called me aside and said, "You know, son, why did you behave that way," I would feel compelled to manufacture an excuse and perhaps a handy excuse, well, maybe he had sideburns and had this and that and I couldn't take him seriously.

But I don't think that in any way -- that we can really assume that that is what took place. I doubt very seriously that the reason that the youth acted the way

he did was because he didn't take the police officer seriously. If he didn't take him seriously, he would have joked with him or tried to rap him out of giving him a ticket as opposed to becoming angry about it.

Q And you are giving this testimony naturally based on your experience not only with the students in Nassau County Community College, but with your several years of training and other pollsampling training, so to speak?

A Presumably.

Q Now, you have heard the testimony of Inspector McBride also concerning --

THE COURT: Let me ask you this. I may be getting off on a tangent. But can you think of a proper method of sampling the population of Nassau County to determine whether grooming in violation of the standards --

MR. HARTMAN: Judge, may I say --

THE COURT: You are going to ask that question?

MR. HARTMAN: I was going to say this is twice in a row that you have been able to predict what we were going to do. Because we have done that.

THE COURT: I'm sorry. Go ahead.

MR. HARTMAN: In effect, that is exactly what we have done. And that's what the foundation is

going to be laid for by Dr. Martindale. And we do have a professor of mathematics from Nassau County College who will actually testify to the --

THE COURT: Who is the plaintiff in this case? Isn't he here?

I thought you were sitting there as the plaintiff.

THE WITNESS: The plaintiff has shorter hair than I do.

THE COURT: But you are not a policeman.

MR. SCHULTZ: The plaintiff has not interest in this case.

THE COURT: What's that?

MR. SCHULTZ: I say the plaintiff has no interest in this case.

THE COURT: Well, that is a self-serving declaration.

MR. SCHULTZ. You might ask him.

THE COURT: The plaintiff doesn't have to be in Court in a civil case.

MR. HARTMAN: He is here.

THE COURT: Where is he?

MR. HARTMAN: He just went to the men's room.

THE COURT: All right.

MR. HARTMAN: That's him right outside with the blue jacket.

THE COURT: It doesn't matter. Go ahead.

I thought you were the plaintiff sitting at counsel table.

THE WITNESS: I would like to respond to your question.

THE COURT: No. I am not --

MR. HARTMAN: That's the plaintiff, your Honor.

THE COURT: Only because I don't want to interfere with the examination.

MR. HARTMAN: I don't mind. I was just reflecting on the fact --

THE COURT: I didn't realize that you had any of this work. Frankly, I had no idea.

MR. HARTMAN: Those two points -- the other points that we were bringing out, first, that there should be a psychologist, and second, that a poll should be taken. And that's exactly what we did do.

THE COURT: Is that the plaintiff?

MR. MC CUNE: Yes sir.

THE COURT: And does the County claim that he's in violation?

MR. SCHULTZ: He's changed his hair.

MR. HARTMAN: Approximately --

MR. SCHULTZ: He changed his hair style since the complaint was made, your Honor.

MR. HARTMAN: He's still in violation technically.

THE COURT: Well, I hope it is, because we may not have a plaintiff. He may not be adversely affected by the regulations. I expected a long-hair to come in.

THE WITNESS: Find somebody else.

THE COURT: Well, that's interesting. Go ahead.

Q Where was I ? I am sorry.

A I am not sure. I assume you were leading into the poll.

Q Yes. You heard the testimony of Inspector McBride concerning community reactions of police officers with long hair. Do you have any reason to question -- question the validity of the --

THE COURT: Excuse me. I am disturbed. I am not saying this lightly.

Here we have a man who is not in violation who brings the action to declare the regulations --

MR. HARTMAN: He was, your Honor, in violation at the time of the incident. He still is technically in violation. At the time the violation was given, of

which he is being prosecuted, he was in violation that his sideburns were approximately one and a half inches longer than they are presently. He's still technically in violation, although they are not as long now as at the time. But he was -- he was indeed in violation at the time according to the --

THE COURT: Don't get the wrong idea. I think you are a nice-looking plaintiff. But I think you may be the wrong plaintiff. I may ask that a picture be taken of him and made part of the record.

MR. HARTMAN: Well, I think --

THE COURT: Did he just get a haircut?

MR. MC CUNE: No.

MR. HARTMAN: At the time of the charge that was given, your sideburns --

THE COURT: He's not under oath. I am just seeing him now.

You know, a plaintiff whose rights aren't affected has no rights in Court.

MR. HARTMAN: Well --

THE COURT: You can have any number of regulations, but if he's not affected by it, it's not a controversy.

MR. HARTMAN: Well, he was at the time. He

still is. Technically he's below the mid-point of the --

THE COURT: I thought Dr. Martindale was the plaintiff. He was sitting there all during this and certainly looked like someone who was clearly in violation.

THE WITNESS: If they can send me for training quickly, I will become a plice officer and --

THE COURT: It's not so easy. Sometimes it's easier to become a psychologist.

(Continued next page.)

BS fls

THE COURT: Go ahead.

Q Can you respond to that question?

A Well, I would like to first state that I do not represent this poll as answering the question. If I can in a sense respond to your question, which is could you conduct a poll which really would answer the question --

THE COURT: I would rather Mr. Hartman ask the questions, since I might interfere with his examination.

A A poll was conducted.

Q Before you go into the poll, I was asking you the question with respect to the validity of Inspector McBride's observations.

A I think the validity of Inspector McBride's observation is questionable. The same reason as the validity of my observations would be questionable if people came up to me, made comments about this particular case and I reported them in the courtroom.

Q Now, Inspector McBride on page 26 referred to the morale of the Police Department. He said, and I am paraphrasing, in my judgement it is a disciplinary problem. It is becoming a morale problem and if we lose discipline in the Police Department we are not going to have much of a system, et cetera, et cetera.

Can you respond to that statement in your opinion as a

psychologist, as to the morale of the other members of the Department, based on the lengthening of sideburns or goatees or hair?

A My assumption is, based upon my experience, that people in general, whether they be police officers or anyone else, are adversely affected when their rights are limited, particularly if they do not see valid purpose for their rights being limited.

There is a considerable body of research with regard to industrial workers, for example, that indicates that contrary to the issues that get publicized in a newspaper, which always have something to do with money, that the basic issues that concern most workers are issues relating to their freedom and their autonomy on the job, and that restrictions interfere with their morale more so than pay issues.

THE COURT: What is the effect of those who have complied, of those who are clean-shaven and have hairlines at about the level fixed by the regulations, how is their morale affected by seeing others.

THE WITNESS: I think their morale would be only adversely affected if the Department becomes sloppy.

I am aware that that claim has been made. I personally do not see any connection between hair length and neatness or sloppiness. I think it is quite

possible, as has been stated, for a person to wear his hair long and still groom it carefully and look neat.

I agree with a portion of what Inspector McBride was suggesting. I don't think it's possible for anyone to take an individual role seriously who does not take himself seriously, and if we assume it is for the public to take seriously police officers, they must take themselves seriously and that part of taking themselves seriously involves taking pride in their uniform and appearance and so on, and I would agree with that. But I think a person can take pride in his appearance and groom himself neatly and still have sideburns or a moustache or longer hair than is now permissible.

Q Now, as far as respect of the public is concerned, Inspector McBride spoke about engendering less respect by the public in a police officer.

Can you tell me again -- of course we will go into detail, but can you tell me generally, psychologically, based on your experience, the respect of the public and its relevancy, if any, to the hair of a police officer?

A My feeling is that hair length is not relevant. I think, as was suggested, that if a police officer were unkempt, were sloppy, that that might affect the degree to

which people would respect him. But I don't think that hair length per se, or facial hair per se is relevant.

Q How about the off-duty effect on a police officer, the effects psychologically and socially on that police officer when he must maintain his sideburns at a regulation when he's no longer in uniform?

A I have had in the course of my private practice three police officers as patients, and while I am quite aware, because of my own work in the field, that three is hardly a sample or a true sample, all three at one time or another complained about one particular hazard of being a police officer, which was that because of restrictions dealing with hair length and so on they felt that they stood apart from their former friends, people that they went to high school with or whatever, and that they were forced, because of the fact that they felt so different, to associate only with other police officers, even while they were off duty.

It is my feeling as a psychologist that that in the long run is bad for law enforcement. I think that to whatever degree the police are out of touch with the other people in a community, and just associate with one another, to that degree law enforcement suffers.

I think the policemen have to be in touch with the community at large. Part of being in touch includes a patrolman

associating with friends that he went to high school with and so on and not just forming new friendships with people, all of whom are on the force.

Q On page 49 of the minutes, Inspector Willard spoke about an attitude of the public and the fact that, to use his words, 96 percent of the population in Nassau County makes value judgments of either affluence and long hair, connecting them with some socio-economic situation which was distasteful to them.

Can you tell me, please, what is your opinion from your experienceand what your reaction is to these statements?

A Well, my basic reaction is that Inspector Willard is anywhere from seven to ten years behind the times. I think that when people first started growing their hair long and so on that it was a manifestation of rebellion, that it did indicate something about their political attitudes, their social attitudes and so on. But I don't think that today in 1974 that there is any longer a connection between hair length and what a person's politics are or anything of that sort.

Q He spoke of the fact of getting used to, so to speak, a situation, the fact that at one time, I think he said, black officers were not accepted; I think he still said that there was a certain problem with that. Can you give a comparison to that with the length of hair as to what in your

opinion the psychological reaction is to the length of hair and how this changes over a period of years.

A On the part of the police officers or the public?

Q The public.

A On the part of the public, I think that in general there is a lot of evidence to suggest that we as a population resist change, but change takes place and we get used to it.

I think that part of what the public can very easily get used to is the fact that the police officers can wear their hair at different lengths in the same way anybody else can wear his hair at differing lengths.

But I think part of what that involves -- which, by the way I think is very important -- is getting used to the notion that police officers are real people and part of the difficulty that I see is, I think summed up in a comment that a colleague made to me, after our court session on Monday when I saw a colleague in school on Tuesday he said, "Well, did you win? Are the cops going to be able to wear their hair like real people?"

And I think that that comment says a lot, that cops are real people and real people have different tastes. Some of the police officers will not be affected at all by this ruling in the sense that they prefer their hair short and will

continue to wear it short. But I think that part of what makes them real people in the eyes of the population is that they display the same variety as the population displays.

Q Now that the question of identification, the ability for someone who is, let's say, being stopped for a traffic violation to be able to identify the person as a police officer; does the length of the hair -- again we will go into the poll -- but does the length of the hair have any relevancy to this question of identification and the ability to identify?

A No, I think that the issues that are important there are the issues that, as a matter of fact, were raised by Inspector McBride when he questioned the youth who was given a summons. He asked the youth, if I recall, wasn't the officer wearing a blue uniform and wasn't he in a marked car and so on. The police officer pulled me over, he was wearing a uniform. I would not question the fact that he was a police officer simply because he might have a moustache or something of that sort.

Q Now, Inspector McBride also referred to the fact of a breakdown in the Police Department, the attitude not caring, so to speak.

Can you respond to that type of testimony?

A Well, I don't know whether he was attempting to suggest that at least part of the motivation for growing one

hair long is laziness or not. I think that if there is that feeling, either by Inspector McBride or anyone else, I don't think there is any basis for it.

As one who wears his hair long, and used to wear it short, I can state that it takes more time to comb your hair in the morning when your hair is long than when it's short, so one does not wear his hair long out of laziness. The same thing goes for shaving, even someone with a beard still has to shave, and as a matter of fact, it is probably more difficult for me to shave now than it was when I simply shaved everything. So I don't think it has to do with an attitude of I don't care how I look, and I will grow my hair long because it's easier that way, or I will wear a beard because it's easier that way.

Q The personal life of the police officers and the possible complication with their lives based on the fact of not being able to fit in, so to speak, can you tell us what effect this has on the ability of the police officer to perform his duties when he is on duty?

A Well, I think that anything that adversely affects the personal life of a police officer at least potentially can interrupt his professional life as well, which is true of any of us.

As there are wives of police officers who are concerned

about the social change which takes place when their husbands join the force, one of the social changes which frequently takes place is that his friends become exclusively other police officers, which means then she is pretty much boxed into associating only with the wives of other police officers so that her friendships are also affected, and I think all of this is likely in many situations to create strain, and essentially what it boils down to is it is an unnecessary strain.

There are certain strains of the job which are unavoidable. This one, however, is a strain of the job which is quite easily avoidable, in my view.

(Continued on next page.)

Q Now, I asked Inspector Willard on page 58 about whether or not these deep-seated irrational responses would be caused because of his sideburns being slightly below the midpoint of his ear, and he stated at the time it would cause deep-seated responses because of his skin color. I don't want to get into the black-white issue and so forth, but in its relevancy to the performance of a police officer's duty, does the length of the hair and the sideburns have any more relevancy than color of the police officer's skin?

A No, because essentially Inspector Willard I felt was implying that because people might react negatively to someone with long hair he should therefore not be allowed to have long hair.

If one follows the same line of reasoning, since people initially reacted negatively to black police officers, at least that was his testimony, then we shouldn't have had any black police officers because people initially reacted negatively to them.

The same thing can be said of female police officers. So if you follow the line of reason inherent in that testimony, we would be back with all police officers being the same height and the same weight with the same hair style and hair length and everything else.

Q As far as the question of Inspector McBride

saying that Suffolk County has gone wild, or words to that effect. I will give you his exact words, meaning that it is out of hand, they can't control it and so forth, can you tell me exactly what your reaction is to these statements?

A I'm not sure.

Q The fact that once the hair regulation was rescinded from the rules and regulations everyone went out and started growing their hair much longer.

A While I suspect that there may be some slight exaggeration in the testimony, it doesn't surprise me. I think that's quite possible that something like that happens, but presumably happens only on a transitory basis, that when people haven't been permitted to do something, whether wear their hair a certain length or drink or smoke or have sexual relations, or whatever it may be, and then all of a sudden the restriction is lifted, they go wild in whatever the area is. A boy who hasn't been allowed to drink in his own home and then goes away to college spends the first two weeks getting bombed ever night.

A police officer who hasn't been able to wear his hair at the length that he might like to, when told that the restriction is lifted, may go wild for a while, but I think that the evidence suggests that we slowly settle back to something that approximates normalcy.

Q Let me ask you concerning the poll. Upon my request, and so that the poll would not be cumbersome, did I ask you to determine what the two major questions which must be asked and which would be relevant to the question of the ability of a police officer to function and the Department to carry out its sworn duties?

A Yes.

Q Can you tell me what those questions were that you determined would give us the information that we desired and the basis for determining what these questions were?

A After conversing with some police officers, and others, we basically concluded that the duties of a police officer can pretty well be summed up in two basic areas: one is apprehension and the other is protection.

Part of the job of a police officer involves apprehending people who are violating the law and the other part involves protecting people in need of assistance of some type, providing assistance.

So we formulated two questions which we felt the general public could identify with. Apprehension, obviously, to the general public doesn't mean getting caught robbing a bank but getting pulled over for speeding or something of that sort. So we formulated two questions, one of which dealt with the apprehension aspect of the police officers job and the other

dealt with the protection aspect of his job.

Q Before you name those questions, Doctor, can you tell me are there really any other -- there has been a tremendous amount of talk in this testimony relating to respect for the police officer, and image of a police officer. Is there anything else which is relevant to the efficiency of the police force other than the ability to apprehend and the ability to protect?

MR. SCHULTZ: I object on the grounds that this witness has not indicated any expertise on that subject.

THE COURT: I don't think Dr. Martindale is qualified to express an opinion on that.

THE WITNESS: Would you like me to read the two questions that were formulated? First I feel it is necessary to point out that we do not -- I am not representing this as the answer. I think in order to conduct the type poll that could be conclusive would take a tremendous degree of time, money and so on, and, among other things, one of the things that would be I think required would be a poll where you could use pictures of various people as opposed to a description. But we essentially said first: Imagine two police officers as follows: Officer A, crew-cut, no facial hair. Officer B, hair slightly over the collar, prominent

sideburns and moustache.

Question one: You are driving at excessive speed and are signalled to pull over. Which officer's authority are you more likely to respect?

Question two: You require assistance from the police and you enter a police station. Both Officers A and B are present at different desks. Which officer are you more likely to approach?

And in each question there were three possibilities: Officer A, Officer B and a choice which read no difference.

MR. SCHULTZ: If your Honor pleases, the witness having indicated that his poll was inconclusive, and that in order to conduct a proper poll he would need pictures and money, I would say then that under the circumstances I object to the testimony.

THE COURT: I will take whatever he has and --

MR. SCHULTZ: And weigh it accordingly?

THE COURT: Of course. If it is not a comprehensive sampling, if it is just a view in the few areas of a certain class of people, it will have no weight at all. If it is a random sampling in different areas, it's 500, a thousand, 2,000, it means more.

Look what happens in the prediction of the outcome

of elections in poll taking. I have seen a poll based on 2,000 voters in the State, I don't know how good the prediction is --

MR. SCHULTZ: They talk about key districts then.

THE COURT: There are other factors. I say, there are many factors. One think I think you have to start with is the presentation of a fair question, and I don't think anyone can complain about these.

MR. HARTMAN: Your Honor, the only thing I want to say, Mr. Schultz made a comment that Dr. Martindale said that the poll was inconclusive. At no time did he say that. He was very fair about saying that this is not the perfect poll, I think that was a very comment for him to make.

THE COURT: He said you need more money and more time, obviously.

THE WITNESS: By the way --

THE COURT: It is county-wide.

THE WITNESS: My purpose, by the way, was not to conduct a poll which would prove, for example, that long-haired police officers will gain more authority or anything of that sort. The only reason for even conducting the poll was to demonstrate the fact that the

observations which had been previously expressed by Inspector McBride in particular do not hold up if you attempt to have people take the poll with different lengths of hair and so on.

One of the significant factors in this poll taking was that four different people were asked to distribute these questions; two of the four had very short conservative hair styles, very well within the Nassau County Police Department regulations, and the other two had longer hair.

This was deliberately done because there is no way you can pick out a neutral person. Either way --

THE COURT: How about through the mail?

THE WITNESS: You have problems there, too --

THE COURT: They don't usually respond, that's the problem. Telephone calls?

THE WITNESS: Perhaps somewhat more valid, but you still have difficulties with telephone calls, too.

THE COURT: I like to use the term sampling when we talk about this, because there is authority for the introduction of results of samplings, but it is required that the other side be advised of the results, the basis for it so that the other side have the right to attack it.

MR. SCHULTZ: If your Honor pleases, in addition to that, we now are faced with what might even be deemed hearsay evidence because he is talking about --

THE COURT: All statements are hearsay.

MR. SCHULTZ: I am not talking about what anybody told Dr. Martindale, I am not going to challenge that as hearsay because your Honor allowed me through Inspector McBride and others to take samplings of what they got, not what somebody else told them they got.

We are now talking about four people working on behalf of Dr. Martindale or anybody else who went out on this alleged sampling, two with long hair --

MR. HARTMAN: I have other witnesses --

THE COURT: It is of no weight as a sampling of the opinion of the community, not four people.

THE WITNESS: Four people conducted the poll.

THE COURT: How many samplings did you take?

THE WITNESS: 284 people were sampled.

MR. SCHULTZ: He didn't do it.

THE COURT: It doesn't matter. All that has to be established is the method, the numbers, and you have the right to come in and attack it or make your own.

MR.HARTMAN: We do have the individuals here, your Honor.

THE COURT: There is the mathematician who will show you that extended to the numbers in the Nassau County, what it would mean in the total population, but you will have the opportunity to attack this by other sample takers, psychologists, social psychologists, clinical psychologists.

MR. SCHULTZ: Also, if your Honor pleases, while this might seem as another reason for not prolonging our stay here tonight, I think I would need more time even to prepare proper cross-examination for Dr. Martindale.

THE COURT: Let's see what he has got to say. I had hoped to complete it. Mr. Hartman says it will take a half hour, but he just talked about his direct examination.

MR. SCHULTZ: In addition to Dr. Martindale, he has a mathemat[illegible]ar and a courtroom full of police officers.

MR. HARTMAN: I am not using the police officers.

THE COURT: They are just here for decoration. They are always welcome, but it has no effect on me at all. I just have to make sure it has no adverse effect.

Go ahead.

3BSbb

BY MR. HARTMAN:

Q How else was a determination made: you had the sex of the individual and so forth?

A Yes. In addition to making sure that the pollstakers themselves were different with regard to the relevant dimension of hair length and facial hair, the people sampled were of both sexes and were categorized with regard to various age categories.

THE COURT: All in the same proportion as what you believe the population of --

THE WITNESS: No. The term for that is a stratified sample. It was not a stratified sample, because in order to prepare a stratified sample we would have had to get exact statistics on what proportion of Nassau County is male, what proportion is female, what proportion under 26 and so on.

THE COURT: Did you also categorize the apartment house dwellers in Nassau County from one-family house dwellers?

THE WITNESS: No.

THE COURT: That might be important.

THE WITNESS: That is the next project.

Q You do have the difference of how males feel as compared to females as compared to younger people below 26,

as compared to people between 20 and 39 and so forth?

A Right.

MR. HARTMAN: Can I, unless Mr. Schultz wants to cross-examine, can I bring on the witness who will give the results of this and the method by which it was done --

THE COURT: I thought Dr. Martindale would tell us what his opinions or conclusions were so that Mr. Schultz has the opportunity to prepare cross-examination if we are going to suspend, so he knows what he has to prepare for.

MR. HARTMAN: I was going to bring him on for a few minutes before I put Dr. Martindale back on, unless Mr. Schultz has no objection to his giving an answer subject to the connection of my other witness.

THE COURT: Suppose we do it that way. You will have your chance to cross-examine the next witness and if you need more time to cross-examine we will bring him back.

MR. SCHULTZ: As Mr. Hartman said, your Honor, we will take his opinion, we will say, over my objection, subject to connection.

THE COURT: That's right.

MR. SCHULTZ: Without an interruption.

THE COURT: Before you even get the opinion, Mr. Hartman would like the mathematician to multiply the figures and show how it affects the County. His is really almost a formula and I can't conceive of any deep cross-examination of the mathematician because I know how efficient lawyers are in addition, you know -- I have it every day in the courtroom, and I include myself as "lawyers." So see if you dare cross-examine him on multiplication.

Suppose you step down, Dr. Martindale, and have the next witness come on to just give us the figures.

(Witness excused.)

J O S E P H C A R L I N O , called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARTMAN:

Q Your name is -- you are a Professor at Nassau Community College?

A That's correct.

Q And how long have you been a Professor at Nassau Community College?

A Since September of 1965.

Q Prior to 1965 can you give your educational

background?

A Yes. I attended the University of Notre Dame, received a Bachelor's degree in Electrical Engineering and a Master's degree from the same institution.

Since that time I have been attending Polytechnic Institute of Brooklyn.

THE COURT: Excuse me. Can you give Mr. Schultz a copy of the findings and the projections -- Suppose you do that so that he can follow.

Mark it for Identification, please.

THE CLERK: So marked as Plaintiff's Exhibit 1 for Identification.

(So marked.)

MR. HARTMAN: Subject, of course, to it being stricken if not admitted, would your Honor want to borrow this?

Do you have any objection?

MR. SCHULTZ: Of course not.

THE COURT: Sure I would like to see it.

Q You are an Associate Professor of Mathematics at Nassau Community College?

A That's correct. I am also a part-time consultant to Columbia University School of Public Health as a statistical consultant.

Q Upon my request and upon the request of Dr. Marchdale, did you, after certain questions were formulated, undertake an assignment to determine the public attitude and the public response to these two questions, as outlined in the survey?

A Yes. I think that should be clarified. I was assigned specificity to see if based on a random sample we could detect a significant opinion on these two particular questions, a significant public reaction.

Q Can you tell us exactly, step by step, Professor, what you did.

A Well, a number of forms were made up, of course, with these two questions, each of the individuals that are named on this survey page were given a supply of these forms, they were asked to go out and go to various communities as best as possible and hand these particular forms out to individuals, and without extensive discussion ask the individual to read the form and consider the question, or answer the question.

If the individual refused to answer the question, the response of "Refused" was not recorded, instead the form was just given to other individuals. The survey was later stratified after the results came back with regard to [illegible] I would like to correct myself. It was not stratified, instead the responses were broken down into

the various categories that you see on this particular form, namely, sex and age groups.

Q By the word stratified, as indicated, Professor, that would mean that instead of saying below 20, between 20 and 39, 39 and above, if you were to say just one example of how the people of Nassau County feel and not put them into age categories and sex categories, that is what would be called stratified; is that correct?

A Not quite. What stratified, the word stratification means, you attempt to adjust the numbers in your sample, all right, so that your sample is a complete model of the community.

That is a very difficult thing to do and very time consuming and in fact it is never done perfectly. In other words, to stratify the sample we would want the exact breakdown of male and female; we would want the exact breakdown of the various age groups, all right, to suit the same breakdown as for the County of Nassau.

In addition, we must also want to undertake the geographical locations and a number of other factors which could enter the picture. But generally speaking, the way these things are done, you have to start with some sample to ask specific questions and you can't attempt to do too much in one sample.

When you find some significance coming out of a sample then you can undertake further research.

Q Can you now tell us, based on how this poll was conducted, the results which you obtained, exactly what these results were and how they fell into the various categories.

A Well, I can read numbers to you, but to summarize, the results showed that the overwhelming majority in this sample indicated no difference of opinion to each question. The overwhelming majority being 72 percent, that's exactly what the computation came out to be, whether or not that reflects 72 percent, an accurate 72 percent of the entire county is another matter. But 72 percent would represent in this case an overwhelming indication that there is really no significant opinion on this matter, on these two questions, from most citizens.

Q And by "no significant opinion," you mean that in the first question a person would find no difference as to which officer's authority he would respect, the short-haired or the long-haired officer, and he would find no difference as to which officer he would approach for assistance?

A That's correct. In other words, the person does not feel --

THE COURT: Do you know where the samplings were

taken, whether they were weighted?

THE WITNESS: They were not weighted. Most of the subjects were interviewed in Hempstead, Mineola, some in Garden City, Freeport, Baldwin; more or less in the center of the county. We did not get out to the fringes. We did not get to Great Neck or over to Massepequa.

THE COURT: Do you live in the county?

THE WITNESS: Yes.

THE COURT: Do you know the county in general?

THE WITNESS: Yes, I have a pretty good idea of the geography of the county.

THE COURT: Do you think that was a fair sampling in area?

THE WITNESS: For what we were trying to do, yes. You see, any sample is fair provided you don't try to infer too much from it when you get the results in.

I wouldn't want to pass this survey off as one which purveys the citizens viewpoint of Nassau County, but what the sample would show is that there isn't really very much opinion on this subject at all.

THE COURT: How about the sampling in Hempstead? That has become I think a low economic area.

THE WITNESS: Yes. In some areas of Hempstead.

THE COURT: Is that a significant factor?

THE WITNESS: There was no attempt made to do any kind of analysis on the basis of income group or social status. It was strictly limited to the basis of sex and age group.

THE COURT: How about the other areas, do you find that generally the area -- is that about what we might call the median level, you don't know what that is, I know, but --

THE WITNESS: We don't really know whether there is a difference from area to area. There might be some reason to believe on the basis of opinion that the people in Garden City might feel a little bit different than the people in Hempstead, but by just taking subjects out of these areas you don't get that kind of a breakdown.

THE COURT: Give me the areas again, Baldwin, you say?

THE WITNESS: Baldwin, Freeport, that area, Hempstead, a few in Garden City that I know of -- I believe it says -- there was one other area, perhaps you can read it back.

THE COURT: All right.

Q Yes, Professor. The overall opinion on question A, which was whether or not they would respect the authority of the police officer, was what percent saying that there would be no difference to them?

A This sampling came out 72 percent.

THE COURT: You don't have to go over all that, I see it. I will assume that the witness testified to all the matters that are in the results.

MR. HARTMAN: I don't believe I have anything else.

MR. SCHULTZ: I do have some questions, not necessarily mathematics.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Mr. Carlino, or Professor Carlino, did you personally attend these poll takings?

A No, I did not.

Q You did not accompany those people who took the polls?

A No.

Q You didn't see them take the polls?

A No, I did not.

Q To your knowledge, the Nassau County Police Department was not notified of these polls?

A No, I do not believe they were.

Q And do you have the documents in connection with the answers that were written down?

A You mean the actual forms that people turned in?

Q Yes.

A Yes, I don't have them with me now but they are available.

THE COURT: Can they be made available to Mr. Schultz?

MR. HARTMAN: Yes.

Q Did you see the people who wrote them?

A Yes.

Q Did you see the people who wrote them?

A Did I see the people checking,no, I did not. Do you mean the subjects --

THE COURT: The people who answered the questions.

A Of course not.

Q Tell me, the pollsters I see here are Philip Chaifetz. Is he one of the men who went out on the poll, to your knowledge?

A Yes.

Q Did you see him go out on the poll?

A I didn't see him get into his car and go, but I did hand him the forms and send him to go.

Q Where did he go?

A I believe he covered the area near Freeport.

Q Do you know that Freeport has its own Police Department, that it is not supervised by Nassau County?

A Yes.

Q What about Elliot Hartman?

A Elliot Hartman covered the Hempstead area, primarily.

(Continued on next page.)

Q You are aware that Hempstead has its own police department not supervised by the Nassau County Police Department?

A I was not aware of that.

Q Do you know whether Elliot Hartman is related to Richard Hartman?

A Yes, I do.

Q And Clarence Honer, where did he go?

A I believe Honer was the one who went into Garden City.

Q You know that Garden City has its own police department not supervised by the Nassau County Police Department?

A I did not know that.

Q Where did Mr. Naiman go?

A The other area that I mentioned. I believe if you read this back you will see.

THE COURT: Baldwin, was it?

THE WITNESS: The Baldwin area. There was another area that I mentioned.

THE COURT: Maybe Massapequa?

MR. SCHULTZ: He said they did not go to Massapequa.

THE WITNESS: Mineola.

MR. SCHULTZ: If your Honor pleases, one second more.

Q Professor, when you talk about Question A, or Question 1, you are driving at excessive speed and are signaled to pull over, which officer's authority are you most likely to respect, the one with the crew cut with no facial hair, or the one that has hair slightly over the collar, prominent sideburns and moustache?

Let me ask you something, Professor, do you drive a car?

A Yes.

Q Have you ever been pulled over by a police officer for an alleged traffic infraction?

A Yes, I have.

Q Did you ever rationalize in your mind while you were being pulled over by a police officer: What does his face look like? Is he tough or is he easy? Before you decide to pull over, do you take that into account?

A No.

Q When the police officer pulls you over, you go over, right?

A That's correct.

Q Professor Carlino, do you socialize with Dr. Martindale?

A No, I do not.

Q Any particular reason? Do you object to his having a beard?

A No.

THE COURT: I assume you don't socialize with Mr. Schultz either?

THE WITNESS: That's correct.

MR. SCHULTZ: I am not in his age group.

Q Question B: You require assistance from the police and you went to a police station. You now have the same two types of officers, one with hair slightly over the back of his neck, or slightly over his collar. You notice it said "slightly over his collar," and with prominent sideburns and moustache, or the one that is crew cut with no facial hair. That is Question 2.

Would you say then that the response there was overwhelming on the "no difference"?

A The numbers seemed to indicate that, yes.

Q Overwhelming? Would you say that if these are correct figures, and of course they are still subject to dispute, you take males, 52 percent say no difference. Is that overwhelming, 52 percent?

A I would believe so. In this size sample, and considering that persons were asked to make a clear

choice, the fact that 55 percent of them would not want to offer an opinion on the subject.

Q We are talking only about the people who answered it.

THE COURT: What category are you talking about?

MR. SCHULTZ: Question #2, A, B, and no difference. You get over-all 157 people answered, and that was 55 percent.

MR. HARTMAN: That is not overwhelming.

THE COURT: But you have to add to that which officer are you more likely to approach?

MR. SCHULTZ: I am talking about no difference.

THE COURT: I know it. One is a neutral position it doesn't make any difference to the individual. The other percentage would prefer someone with long hair. That doesn't help you.

Don't you add those who would actually prefer someone with long hair to those that say it makes no difference at all?

MR. SCHULTZ: I am talking now about since he gave with regard to the answer to Question 1 --

THE COURT: Let's take Question 1.

MR. SCHULTZ: -- that it was overwhelming because he has 73 percent, that that is overwhelming.

THE COURT: Let's go to Question 2, 55 percent. Has hair slightly over the collar, prominent sideburns and moustache. 32 percent would prefer the man who has, the officer who has -- or say that the officer who has hair slightly over the collar, prominent sideburns and moustache, more likely to respect that man than the crew cut with no facial hair.

MR. SCHULTZ: Let me ask you this, Professor Carlino, do you know what type of people were interviewed?

THE WITNESS: No, I do not.

Q Do you know whether the people who were interviewed have long hair?

A No, I do not.

Q Do you know whether or not the people --

THE COURT: The females probably did.

MR. SCHULTZ: I am not talking about that. The males had long hair.

Do you know whether the males had long hair?

A I do not know that for a fact.

Q Do you know whether or not the males who were interviewed had prominent sideburns?

A No.

Q Do you know whether or not the males inter-

viewed had beards or goatees?

A No, I do not.

MR. SCHULTZ: I would like to reserve any further cross-examination for a future date.

THE COURT: Surely. It is vital to submit copies of the answers to Mr. Schultz, and if you would like to talk to the pollsters you may talk to them and bring them in, if you wish. That is what we mean by accepting this type of evidence subject to challenge.

Normally, we require reasonable time before the witnesses come on the stand so that the other side can make an investigation and conduct a cross-examination.

You may step down, Professor, and it may be that you may have to be called back for cross-examination, but Mr. Hartman will be in touch with you to find out whether Mr. Schultz wants your presence. Thank you.

Suppose you complete by just giving your opinion and then we will adjourn your examination.

MR. SCHULTZ: He is going to have to come back anyway.

THE COURT: Yes. Why don't you get the benefit of the opinions drawn from it so that it will give you

something to shoot at when you come back for cross-examination.

D A V I D A. M A R T I N D A L E, having been previously sworn, resumed the stand and testified further as follows:

BY MR. HARTMAN:

Q Based on the results of the survey which was taken, can you give us your opinions based on your experience as a social psychology as to what these results mean?

A I think that despite the fact that the sample is small, that it is still quite safe to conclude that there is only a very small proportion of the population in Nassau that is likely to be adversely affected by long hair on the part of a police officer, either in the sense that they would be less likely to take his authority seriously or that they would be less likely to feel comfortable seeking assistance from him.

Our major reason for introducing this is in a sense simply to refute the contention that 96 percent, to use the figure that Inspector Willard used, 96 percent of the people have violent reactions to those with long hair, which presumably would include police officers, even though he wasn't referring to police officers at the time.

Q Based on the other various items which were brought up as far as the police department's case to show the

overwhelming necessity to promulgate and maintain these rules and regulations, can you tell us based on these results whether or not the respect for the police department would suffer if the rule and regulation were rescinded and not in effect?

MR. SCHULTZ: I object, if your Honor pleases.

THE COURT: I will allow it.

MR. SCHULTZ: There is no foundation for that because he may be talking about the general public with regard to general people --

THE COURT: All this is based on the validity of the sampling. If I find the sampling is not accurate or does not truly reflect the opinion, then all the experts' opinion is just out. That gives you your work and you will have to attack it from the County's point of view.

You are at liberty of course to conduct your own sampling, if you wish.

THE WITNESS: Could I ask that you repeat the question?

Q. I was referring, Doctor, to the allegations or statements made that respect for the police department suffers and this causes a breakdown in the efficiency of the police department to work and perform their duties;

based on the statistical survey, can you tell us what your response and opinion would be on this question?

A Very simply, I think that you can safely say that there is no evidence that that would take place. I am not maintaining that we have evidence that it would not. I simply feel that the poll suggests that there is a lack of evidence that it would, and it is my understanding that it is the obligation of the state to prove that such a thing would take place. And I feel that this would very seriously undermine the argument that -

THE COURT: That is for me to determine. It may or may not.

THE WITNESS: Sorry. I don't think that there is any evidence to suggest that such a problem would take place.

Q And as far as Inspector Willard's comments that there is a deep-seated irrational reaction, can you tell us, based on the survey, what your response would be to that?

A My response based on the survey is the same as the response that I made previously, that I think he is 7 to 10 years behind the time. I don't think people have the kind of reaction to other people with long hair that they might have had when hair was a very symbolic issue. I don't think that it is any more.

THE COURT: You think that 7 to 10 years ago his opinion did have validity?

THE WITNESS: In the sense that people had very strong emotional reactions to the issue of hair length, yes. Seven to ten years ago people assumed that anyone with long hair and so on was a hippie freak, and I think that that's quite plainly not the case any more, as the U.S. attorney that was in the Court last week would, I am sure, agree, since he was used as an example of mutton chop sideburns and so on.

(Continued next page.)

THE COURT: Oh, yes, I forgot it was only last week.

MR. HARTMAN: Two weeks ago.

THE WITNESS: A week ago MOnday.

MR. SCHULTZ: These opinions that are being rendered by Dr. Martindale with regard to Inspector Willard being seven years behind the time is predicated on that alleged survey, am I right?

THE COURT: I don't even think there is anything in the survey from which you can draw that inference. I allowed him to express an opinion, only I thought it might be helpful to you, but it might very well be a question that you might ask him on cross-examination, what Dr. Martindale is saying in effect is there was a time when what you were saying was valid.

I think that is a significant concession. Was there a change from 7 to 10 years ago? I thought that would be a good question for you, that's why I asked the question.

MR. HARTMAN: I have no further questions.

THE COURT: Then we will suspend at this point. I think what I ought to do is wait to hear from you, Mr. Schultz, because it is going to be your cross

examination.

I would like you to call and speak with Mr. Hartman and tell me when you think you would be ready for cross-examination and tell me whether you believe you might like to offer your own sampling -- I am not suggesting that you do, but that is a thought that comes to mind.

If you tell me when you are ready then I will try to fix a date for completion of this hearing soon after that. I will do the best I can. I would like you to approximate the time that you will take. I hold these hearings on Friday only because -- on some Fridays, because they are my motion days and I don't know whether I will have a criminal trial going, otherwise it is very difficult for me to --

MR. SCHULTZ: I would like to start at 10:00 o'clock in the morning because being here on Friday at a quarter after six is very difficult for me.

THE COURT: I would like to start at 10:00 o'clock too, but it is very hard for me to find a day when I won't have a criminal trial here and I can't suspend a criminal trial to complete this.

Sometimes I charge in the morning and I have the afternoon free, so that's why I say if you tell me that you are ready to proceed after speaking with

Mr. Hartman, I will tell you when I can take it and if you tell me it is an hour or two, well, then I can

MR. SCHULTZ: I don't want to be lulled into a feeling -- off the record.

THE COURT: Put it on the record.

MR. SCHULTZ: That on Friday at 2:00 or 2:30, because it isn't important, because I think your Honor appreciates that this case is important.

THE COURT: Well, I don't know, I reserve decision on that. I think that Mr. Justice Black, I think it was who said it once before -- he didn't say it in this way, but too much waste in the Courts -- it is important like any other constitutional right is important; some are more important than others. To this Court everything is relative. Everything seems important to the litigants. Every judge has so many cases that they think it is vital to the interests of the case. Every judge has something he thinks if he decides it the wrong way the country is going to fall apart tomorrow. So when you talk about a hair case compared to those cases, it is not that important.

I know that the litigants feel that on the one hand the viability of the Police Department of the County of Nassau is at stake, and on the other hand, the plaintiffs feel that the life of the Constitution

is at stake. If they lose this right to groom their hair as they wish, every other right will just disintegrate and fade away and they will be under a dictatorship. That is the way people feel.

You should be able to tell me, I will take an hour, two hours, three hours, four hours; it may very well be I will start at 2:00 o'clock. But it is only because I don't have any other time. I was busy all morning until 2:00 o'clock.

MR. SCHULTZ: Your Honor, please, I was never intending to criticize the Court.

THE COURT: It is just a question of finding time. It is almost impossible --

MR. SCHULTZ: Did your Honor think I was criticizing you?

THE COURT: No. You were trying to tell me that your case is important, as important as the criminal cases that are pressing for trial. Let me tell you something, I think that there are many criminal cases that can sit back and wait until a civil case is tried.

MR. SCHULTZ: Unless the man is in jail.

THE COURT: Even if the man is in jail, many defendants would rather stay there and not be bothered.

This whole idea of speedy trial rule should have a real close look. There are many public interest

cases that deserve to come before the criminal cases, but we are so pressed to try these -- Senator Ervin has a bill in the Senate, they tell me it's going to be passed in the House now, they want every defendant in custody to be tried within 30 days of arrest, indictment or any other charge, or 60 days if he is not in custody.

If that happens I'm going to try to swap places with one of the Congressmen that voted for it, because I know I can't do it. So I say, we just don't have the time. I don't mean to say that this case isn't important, important to you and important probably to many people outside of this courtroom, but if you know it is not going to take more than two or three hours, and if the only time I have is 2:00 o'clock, why should you wait a month or two until I have a free day, why not take the next Friday?

MR. SCHULTZ: I would like to read the minutes.

MR. HARTMAN: Can we set a definite date, your Honor?

THE COURT: It is very difficult.

MR. HARTMAN: Next Friday at 2:00 o'clock?

MR. SCHULTZ: Next Friday I have another matter before Judge Weinstein.

MR. HARTMAN: Maybe 2:00 o'clock next Friday.

MR. SCHULTZ: I don't know if I will be prepared at that time. I may want to take my own sampling.

MR. HARTMAN: Are there any witnesses I could see now, because I have some very short ones?

MR. SCHULTZ: I don't think it would be fair to me.

THE COURT: Maybe Mr. Schultz will concede the testimony. After the 4th, the only Friday I have is the 18th.

MR. HARTMAN: Let's have the next Friday.

MR. SCHULTZ: I can't be ready next Friday.

THE COURT: You put a sampling in -- if you do that, how long will it take?

MR. HARTMAN: Since the last time --

THE COURT: Two weeks ago.

MR. HARTMAN: A week and a half.

THE COURT: When did you get through with it?

MR. HARTMAN: Wednesday.

THE COURT: You took ten days. Suppose they want a sampling?

MR. HARTMAN: There are other witnesses besides. I have several other witnesses that may testify, some others that may not.

THE COURT: What's wrong with the 18th? I will

do it either the 18th or Mr. Schultz will get in touch with you and tell you that he has completed his examination and is ready to cross-examine and I will put it down. It may be that I may have a free day and maybe we will start at 10:00 o'clock. I can't promise any day during the week.

MR. HARTMAN: May we have next Friday just to complete whatever witnesses we have? I understand he won't be completed with the survey, but there are other witnesses to put on from Suffolk County.

THE COURT: Isn't it silly to come in for a few witnesses when you have to come back again for cross-examination?

MR. HARTMAN: It is going to take two, three hours.

MR. SCHULTZ: I don't think it will save anything at all to do it that way.

THE COURT: Your short witnesses are going to take two or three hours?

MR. HARTMAN: With the extended cross-examination that Mr. Schultz has been using, is going to be using, it is going to take two or three hours for the other witnesses.

THE COURT: If we leave it open, I might have a date, a case may fall apart. I am in the middle of

a trial now, you know. I suspended Wednesday and they are coming back Monday. That's the way it's been going. There is hardly a day I don't have a trial going on.

I think the best way to handle it is to wait until Mr. Schultz contacts you sometime this week, maybe Monday or Tuesday, calls me and says "I'm all ready and let's fix a date. Tell the Judge we are available." And then I will call you and say here's the date to come in.

MR. SCHULTZ: Unless I am taking a sampling in the meantime, I will tell Richard Hartman that I will be doing that.

THE COURT: Do it as speedily as possible.

MR. SCHULTZ: We will start working on it Monday morning as to what I want to do. I am doing no more tonight.

MR. HARTMAN: The problem we have is that all the other police officers who are back in Nassau County may very well be prosecuted in the interim period for long sideburns until we get a decision.

MR. SCHULTZ: I assured the Court --

MR. HARTMAN: Please, Mr. Schultz, don't assure the Court because you have to talk to your commissioner first, that these members are being written up with

charges and what we are going to have is a situation here where we have to bring injunctions on every individual case, and I have been trying to avoid a multiplicity of litigation.

THE COURT: Has anything happened since the action was started?

MR. HARTMAN: Yes, there has been an order out that they must comply strictly with the rules and regulations, and officers are told if they come in Monday with long sideburns they are going to be brought up on charges or that they will be written up.

THE COURT: Has anybody been brought up on charges?

MR. HARTMAN: They have all been told and have been cutting their hair.

If I have a stipulation from Mr. Schultz that no one will be brought up on charges in the meantime --

MR. SCHULTZ: The Commissioner assured me that nobody has been brought up on charges.

THE COMMISSIONER: I am in a position to have knowledge on it and I would like to speak. It is our understanding that our rules and regulations have not been suspended or set aside, that we should maintain a status quo, that our members should comply with the rules until they are declared void or

unconstitutional.

So we have issued an order that the rules are still in effect and must be complied with by the members, and we have directed our superior officers to take cognizance of any violations and report them. But we are not prosecuting and we are not adjudicating and we are not inflicting punishment until this Court rules.

But on the contrary, Mr. Hartman or officials of the PBA, have advised the members that they can violate the rules, they do not have to comply with the rules.

MR. HARTMAN: Absolutely not.

THE COMMISSIONER: And this has caused the confusion and the misunderstanding.

THE COURT: They do that all at their own risk. What would happen --

MR. HARTMAN: Absolutely not.

THE COURT: What would happen after my decision and the losing party takes it to the Court of Appeals and then from the Court of Appeals applies for cert, that alone could be three, four, five, six months, right? So there is a hiatus until the time it is finally determined.

MR. HARTMAN: By the interpretation of the word

"cognizance," it means that the Commissioner is bringing members up on charges, yet he will not bring them to trial or punish them, butthey will have charges against them, which is a violation under the Civil Service where they lose points in promotional examinations, which means I am put in a position now where I have to bring actions on every single one of the individual members who are here, and it is not right to do that.

THE COURT: Mr. Hartman, you never advised the other side that you were taking a survey.

MR. HARTMAN: I have no problem with that.

THE COURT: If necessary he wants time to prepare.

MR. HARTMAN: No problem. All I am saying, Mr. Schultz could very well, because of the problem we are having here, make it next Friday for whatever purposes, and we have three or four hours.

THE COURT: That doesn't solve your problem, that won't end the case. That won't get it on to the Appellate route.

MR. HARTMAN: At least it is closer. We have a situation where it means I have to bring actions on every single police officer on an individual basis.

THE COURT: You have not had to do that yet.

MR. HARTMAN: I have to now because they have been told that they will be brought up on charges if they don't cut their hair. By being brought up on charges I mean they will not be given -- that a disciplinary report will not be given on them. By the Commissioner's understanding of enforcement, it means they are not going to be suspended and have a day's pay taken away from them, but it is just as damaging to a member if he is brought up on charges because he loses the Civil Service testing, whatever the case might be on that, but if we eventually lose the case they will all retroactively be brought to trial, which means members will be brought to trial on something they did a year before.

I am not saying this just to be in any way combersome upon the Court in any way, but what has happened --

THE COURT: What do you want me to do?

MR. HARTMAN: I would ask that Mr. Schultz, would he -- that we can hold the case as soon as possible, or in the alternative that I have some understanding from the defendant, because I have no idea --

THE COURT: I can't direct the Department to do anything. I just have one case before me. I told you that before. You think I can issue a wide order in

this case.

MR. HARTMAN: No. But I think that because of the fact that the County Attorney himself is the one who says he can't even discuss the other things because he is tied up with another matter next week, that if these men come in with sideburns that are below three-quarters of an inch below the lower portion of the ear lobe, that they not be brought up on charges.

THE COURT: Mr. Hartman, I am not going to argue with you about when the next day is, but if you don't want the alternative where Mr. Schultz will call you and tell you he is ready and fix a day, it is the 18th.

MR. HARTMAN: I do.

THE COURT: If I can advance it from the 18th I would be glad to. That's all.

MR. HARTMAN: Thank you very much, your Honor.

THE COURT: All right.

(Time noted 6:30 p.m.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ROBERT W. MC CUNE,

Plaintiff,

-against-

LOUIS J. FRANK,

Defendant.

United States Courthouse
Brooklyn, New York

October 25, 1974
9:30 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

IDA RUBINSTEIN
ACTING OFFICIAL COURT REPORTER

Appearances:

RICHARD HARTMAN, ESQ.
Attorney for Plaintiff

Attorney for Defendant

COURT CLERK: Civil Hearing, McCune v. Frank.

MR. SCHULTZ: If your Honor pleases, with the consent of Mr. Hartman, in lieu of producing Dr. Carl W. Irwin, I-r-w-i-n, of 336 Mount Hope Avenue, Bangor, Maine, Mr. Hartman and myself make the following stipulation; that if Dr. Irwin was called to testify, he would testify that any hair on the face would interfere with the proper sealing of the use of a gas mask or ScotPak, which would therefore cause leakage through the seals, which are part of the gas mask and ScotPak without conceding the truth thereof.

MR. HARTMAN: Can I have one moment, -your Honor?

MR. SCHULTZ: Would you wantto add to that, Mr. Hartman?

MR. HARTMAN: I think what Mr. Schultz -- what I said, if he were to testify it would have to be hair in specified places.

THE COURT: Where the seal is, I suppose.

MR. HARTMAN: Where the seal is.

THE COURT: Wouldn't interfere with a moustache.

MR. HARTMAN: Not possible, not even with a goatee. It depends where the hair is.

MR. SCHULTZ: Based on that stipulation, your Honor, so we know what we're talking about and who Dr. Irwin is, without conceding the truth thereof, I

would like to offer in evidence the resume of Dr. Irwin's qualifications.

MR. HARTMAN: I don't object.

THE COURT CLERK: So marked as Defendant's Exhibit B.

THE COURT: Don't you think I ought to know where the seal comes in contact with the face?

MR. SCHULTZ: I think that testimony was given to you by several witnesses and it showed --

THE COURT: Oh, yes.

MR. SCHULTZ: Showed moustaches and it showed goatees and moustaches beyond the corner of the mouth, because that was where the seal would be covered. I think you already have that.

THE COURT: It was described but not in narrative form. I mean, it didn't show specifically how, when a mask is placed on the face the point of contact -- I know approximately, but the hair growth. I'm particularly thinking of are those long sideburns that somebody called "pork chops"?

MR. SCHULTZ: That's right.

THE COURT: I don't know whether "pork chops" would interfere with the seal. Do you agree it would, Mr. Hartman?

MR. HARTMAN: I don't know. I really couldn't

stipulate to that because I really don't know.

THE COURT: All right.

MR. HARTMAN: If your Honor pleases, for the continuation of his testimony, may I recall Mr. Joseph Carlino?

THE COURT: Sure.

J O S E P H F. C A R L I N O, called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: Recalled, Mr. Carlino. You were previously sworn and you understand you're still under oath.

DIRECT EXAMINATION

BY MR. HARTMAN:

MR. HARTMAN: If your Honor pleases, pursuant to your Honor's direction, I did serve the County with a copy of this which I'm sure Mr. Schultz will stipulate to. It's marked and signed by Mr. Schultz last week and also the Commissioner of Police, a copy was served on last week. And I would ask if Mr. Schultz has no objection that your Honor, before I admit into evidence, before having the basis set for this poll, that your Honor be allowed to follow us by looking at it with, of course, the understanding if it were excluded that it would not be admitted into

evidence at that time.

MR. SCHULTZ: Well, I have no objection to your Honor looking at any documents Mr. Hartman has in connection with testimony, because I can still reserve my right to have it excluded from evidence.

THE COURT: It's just as a guide to follow testimony?

MR. SCHULTZ: Even if you look at it, I can still ask it be excluded.

BY MR. HARTMAN:

Q Mr. Carlino, you testified previously as to a -- do you want me to stand some place, Judge?

THE COURT: What's that?

MR. HARTMAN: Shall I stand over here?

THE COURT: Any place that's comfortable.

MR. HARTMAN: As long as Mr. Schultz can hear me.

Q Mr. Carlino, you testified previously as to a poll that you had taken and an initial survey and the results of that poll.

Now, pursuant to certain questions that were raised last time concerning the extensive necessity of that poll, concerning the number of samples that were taken, did you at my direction undertake another poll?

A Yes.

Q And can you please explain to the judge exactly what you did do?

A What we did generally speaking, was to try to control the survey more carefully and to try to break down the sample in such a way we do get a better reading as to who was answering the questions and, of course, as well as how the questions were being answered.

Also we attempted to get a good look at the approximate breakdown of the sample to see how well it could conform to the actual population of the county.

You'll notice that we did revise the form. That form, your Honor, do you have the copy?

THE COURT: I have it. Possibly I could go step by step as per the written material you have. You say the attached computer listings Appendix 1 results of a public opinion poll conducted during the period of October 3rd to October 7th in Nassau County. Is that this blue bound book?

THE WITNESS: This is the results, yes.

Q You say this poll was conducted under your supervision and that the questionnaires utilized in this poll is attached to Appendix 2. Look at Appendix 2. Can you tell me how this questionnaire was revised?

A We added the additional questions at the bottom, personal questions as to the person's race and approximate annual family income and, in addition, we did ask for the town name of the town which that person was living in. The questions as far as sex and age, were on the previous form and they were not changed.

Also, we did not make an effort to change question 1 or 2. They are exactly as you see here.

The eight solicitors were employed to serve 1978 persons in Nassau County, and each of these solicitors were given specific instructions as to the method to be used in conducting this poll.

Q Can you tell me how these solicitors were selected specifically, instructions given to them?

A We choose the solicitors -- some of our laboratory assistants in the department, some of our faculty as reliable persons. All right. They were either students or they were young adults. They were given specific instructions not to attempt to interview any of the possible candidates for this questionnaire. That would require, of course, the work of a trained interviewer and this particular questionnaire was only a questionnaire, not an attempt to make any kind of psychological study.

So they were specifically instructed to, in

addition to which areas they should visit, in terms of their interaction with the subjects.

They were specifically told simply to hand the questionnaire to the subject and ask them to answer it. Not, of course, to exert any pressure on the individual to answer the particular questions.

Q As far as the instruction to the solicitors, I note that is attached to Appendix 3. Was a copy of this instruction sheet given to each of the solicitors?

A Yes, it was.

Q I note you asked they give the date and time they arrived and that you -- they asked the potential subjects how you took that, you asked them, to solicit as broad a person as possible. What did you mean by that?

A We did not want them to go to any particular areas and for instance, we did not want them to go to a shopping center and interview, during the day, for instance, and find that almost all of the respondents were women, all right?

We asked them if they were going to a shopping center, to make sure they went there that weekend. That they would find a distribution of men and women. Many of the solicitors when they came back told me they found some of their best distributions like MacDonald's hamburger stands.

People not only more willing to give of their time since they weren't in any particular hurry, but also find a better distribution.

MR. SCHULTZ: If your Honor pleases, I find that we have here, quite some extensive testimony with regard to conversations between Mr. Carlino and people of whom I have no knowledge. Certainly it is well into the realm of hearsay evidence. I therefore voice my objection to this line of questions.

THE COURT: Objection overruled. Surely hearsay, but this is permissible hearsay. This all goes to the validity and reliability of the sample. As long as you have the underlying basis and the methods, it's assumed that you got this information before Mr. Hartman says you did to give you the opportunity to check it out any way you wanted to.

Mr. Schultz, if you want to bring any of the solicitors in and these are only eight we're talking about, bring them in and cross-examine them as to what they did.

MR. SCHULTZ: What they did?

I think it will be incumbent upon Mr. Hartman to bring them into --

THE COURT: Not at all.

MR. HARTMAN: I'll introduce testimony if Mr. Schultz requests by me to --

THE COURT: That's very kind of you.

But as I understand the hearsay evidence, obviously hearsay of a sampler is admissible only if the underlying basis is offered to the adversary with the opportunity to check it out. It's the only way we possibly have sampling evidence. It's all opinion evidence and I might say I listened very attentively to a lecture on it by someone who I regard highly and who's done a lot of work on it, our own Judge Dooling. We have more and more sampling testimony come into the courts and this is the proper way to do it.

I think the only objection in the last hearing was that Mr. Hartman didn't make available to you the underlying information that's why I adjourned it to give you that opportunity.

Go ahead.

BY MR. HARTMAN:

Q And I do note as part of Appendix 5, you have the names and addresses of all the solicitors. Was this part of the exhibit which you gave to me to give to Mr. Schultz last week?

A Yes, it was.

Q Can you continue on what you were saying?

A The question was in terms of the question of trying to obtain an equal distribution and I indicated to you that we asked the solicitors not to visit areas where they had a preponderance of say, women over men or men over women, etc.

Incidentally, along the same line we did ask them to try but, of course, you cannot expect that a solicitor going out to a particular area be necessarily able to control this sort of thing. We placed a good deal of hope on mathematical odds that in the final analysis when the samples all came back that we would get a good distribution.

All right. And to a major extent that did occur which I will give testimony later on.

Q And then, you asked them, I assume, as it says here, to initial each form in the lower right-hand corner and indicate time of departure. This was for each of the solicitors?

A That's correct.

Q And then, they signed their name and address, which is attached as an exhibit Appendix 4. Can you describe Appendix 4 to us, please?

A Well, Appendix 4 is nothing more than a statement on the part of the solicitor. They did in fact appear

on the time and date indicated. We asked them for their signature and their initials; of course, we did check their initials to make sure they were the same as to the initials on each particular form that they passed out.

This is the particular statement, I think it speaks for itself.

Q Then they declared they personally solicited each of these individuals?

A That's correct.

(continued next page)

tom
2

Q Now, I note that you say that the population profile of this surveyor conformed generally to a 1970 US Government consensus as summarized by a 1971, October 1971, Nassau-Suffolk County Regional Planning Board. Do you have that with you or can you describe to us, exactly what it was that you base this on?

A Well, I have the book, but it would take some time for me to go through it and find all the places we looked. But we did take this book out of the library and incidentally, it did play one role in our designing of the questionnaire.

Maybe I ought to cover that first.

You'll notice that on the form itself, appendix to, we chose our income groups exactly the same way as this particular census did it. When it analyzed income groups, of course, the reason for that was simply so that we could try to establish a correspondence between the information here and the information that we were getting back on the questionnaire.

Now, we do realize that due to inflation over the past several years, that the term "income" doesn't have the same meaning, the numerical meaning, does not then have the same meaning as it did then. But under the assumption that everyone's income has arisen proportionately, which may or may not be a valid assumption, we would expect that the break-

downs as to the high category, low categories, many medium categories, would be approximately the same.

If they have in fact, shifted over the past three years, it's not possible for us to determine that until another consensus comes up.

MR. SCHULTZ: If your Honor pleases, now we're in the field of speculation. I think the witness has indicated that we are assuming that I think that on an assumption, dealing with speculation, that evidence should not be admissible. I therefore --

THE COURT: Overruled. This is all probability, and the description of the methods used are most important. And how the witness arrived at the opinion that the results probably reflect not only the attitudes of the particular population, but also reflect, I shouldn't say that; and thebasis is that they reflect the various areas of population and economic strategy by reason of income.

That's the purpose of the whole thing, right?

THE WITNESS: Right.

THE COURT: As I understand it.

MR. SCHULTZ: Thank you, your Honor.

Q Can I ask you what exactly was that census again? Can you just describe what you were talking about?

A It's quite detailed, several books. This is the United States Census as compiled by the Nassau-Suffolk County Regional Planning Board. That was done in 1970. It contains information very finely broken down by township, by census tract, what have you.

Also contains a number of maps, which I found very useful in the back, perhaps I can just pull out one of them, I believe everyone can see.

Maybe I can show every one?

THE COURT: Would you like to come up to the witness stand, Mr. Schultz, so you know what Mr. Carlino is referring to?

A I don't know if this is the particular map.

MR. SCHULTZ: Can your Honor see?

THE COURT: Yes.

A This, we found most useful. Five, the right page, but it was a map, just like this, anyway, what is done here, you'll notice the different-colored areas. The red area shows the high-income areas. Whereas, this extremely light area, there is only one on this page in Naasau County, a number of others here, in Suffolk, light area shows low income area.

I shouldn't say high or low.

Medium income, greater than twenty thousand, is called the high, and the low is medium income, lower than ten thousand.

So, by using this particular map and knowing the town in which an individual lives, you can determine what kind of residential area in terms of medium income of that area, the person lives.

It may not be so as to whether the person lives in Freeport, Baldwin, or Garden City as much as it is as to the type of community as characterized by its medium income.

We did do this and get a good breakdown according to the residential type, not so much the name of the community itself, but the community as characterized by itself, medium income.

We found this particular map, and documentation. This book was very useful in that regard.

Q The town, you are using the town ?

THE COURT: Community.

Where do you live? The name of the town, city or community, whatever it may be.

Q Now, can you describe to me exactly what these pages indicate? I guess it's approximately 30 pages, whatever it is. Answer: /In the survey itself -- well page one of course, gives the complete profile of the sample and the grand total of the result.

Q And can you describe that?

A Yes. Okay.

Question by me "You find here on male, female, the same people it's --"

Incidentally, I think the sample, the total 1385 persons responded to the survey.

Q I know you have 1978.

A Okay, I am sorry, 1978. I can't check that right now.

1978 persons actually responded to this particular survey.

Q Might I ask you, this box which was supplied to me, does this contain every single sample that was taken?

A To the best of my knowledge, I didn't count them but we did box them all together.

Q Thank you.

MR. [illegible]: Excuse me. May we mark the folder containing the printouts for identification and mark the --

THE CLERK: Mark plaintiff's Exhibit 2 for identification.

(Plaintiff's Exhibit 2 for identification)

Q Mr. [illegible], mark the exhibit attached to it.

Is that the --

MR. [illegible]: This is a continued hearing.

THE COURT: I already had one.

Q Does Exhibit 2 contain any other exhibit?

THE CLERK: No.

THE COURT: Mark this as another exhibit. Mark that three.

THE CLERK: Five page document marked Plaintiff's Exhibit 3 for identification.

MR. HARTMAN: Would your Honor wish to mark that book also?

THE COURT: That's marked. Other material attached to it is 3.

If referred to a specific page, then we'll mark it with a letter.

MR. HARTMAN: May I indicate for the record, your Honor, I did notice Mr. Schultz of the existence of this box of 1978 samples, and I did tell him, I guess, itwas last week, or whatever it was, it would be available to Mr. Schultz for his examination at any time.

MR. SCHULTZ: I might say for the record, I was noticed at 10 P.M., at my home, by telephone. I told him I wasn't going to look at them --

MR. HARTMAN: No, not last night, last week.

MR. SCHULTZ: Unfortunately, he had my home telephone number.

MR. HARTMAN: I don't know. Maybe it might be

simple this way; if Mr. Schultz has no objection if I might take one of these samples as a typical example of what it looks like at least, a filled-out sample.

Would you have any objection?

MR. SCHULTZ: It isn't a question of having any objection. If your Honor pleases, I hope you will bear with me as far as the record is concerned.

THE COURT: Yes, sure.

MR. SCHULTZ: Without the poll-taker being here, and also in connection with the propriety of the questions involved, on which I will voice my objection where it is necessary, I object to the document, but if your Honor overrules my objection, then I will have no objection to the one document to which I object.

We should have the same force and effect as if I was objecting to all nineteen hundred and seventy eight of them.

So, serve as a sample of all the remaining.

THE COURT: Of course. Mark the complete box with a number.

THE CLERK: So marked, as Plaintiff's Exhibit 4 for identification.

THE COURT: Mark the sample that he's using with a letter.

THE CLERK: So marked Plaintiff's Exhibit 4A for identification.

THE COURT: I understand clearly, that Mr. Schultz, you have an objection to the testimony and the offer of any of those exhibits.

MR. SCHULTZ: Correct, your Honor. I don't know whether you want to clutter the record by receiving all of them, because one will probably receive --

THE COURT: They are not received. I just marked it for identification and the purposes of the witness' testimony will relate to the group.

We know that's the group.

MR. SCHULTZ: Very well, your Honor.

Q I show you Plaintiff's Exhibit 4A for identification. I ask you if that resembles what a filled out form or questionnaire would be?

A Yes.

Q Can you describe to the judge exactly why there are certain indications that their initials are on the bottom for instance, what is that?

A Initials on the bottom right hand corner, are the initials of the surveyor or solicitor.

Q Were all those initials checked with the initials, checked, of the survey poll-taker? That were initialled on

his affidavit or his declaration?

A Yes.

Q Now, I also notice there are some red letters on the top three, one, two, two on the lower -- something of that sort. Can you describe what that means?

A In some cases, this just represents scribbling they're supposed to jot down the times they reported to various areas.

Weren't really supposed to put them on these forms, but some did. We asked them to put that on the summary form and to submit the whole thing as a package. So they really don't mean very much.

Q I also notice that there is a check or X or whatever might be on that one. Each of the particular areas they raise, the medium income, the location which I think is dealing in that case. Also to the responses.

Now, who filled out those responses.

A The person who was handed the form by the solicitor was to fill out those responses.

Q The person who was asked, tell me exactly how -- was a typical situation?

A The solicitors were instructed to hand this particular form to the individual they wished to have answer the questions.

Politely asked them, of course, if they would answer those questions. If they would simply place a check mark in the appropriate spot. Then, the solicitor received the form back and the solicitor was to initial this. All right. And put it on the pile and to collect as many of these as possible.

Q Now, the -- on the particular posters that were selected, because of the fact that there was a hair issue involved, can you tell me what length hair, or generally what the type of facial hair those persons had, the eight persons?

A Of course, several of the solicitors were women, all right. I think you are referring to the males here.

Q Yes.

A Want me to look at the names? The male solicitors I would say, my recollection, their appearance, they all have mild looking hair. Not very long, or maybe sideburns.

The hair is about your own length, but perhaps a little more. Probably neat sideburns. No long hair solicitors, no --just average hair length.

THE COURT: Did you take that into consideration when you selected them?

THE WITNESS: No, I did not, your Honor. In this particular case, the persons were being asked to survey a wrong number of persons. This became a --

we wanted very little interaction between the interviewer, which I really should not call an interviewer, I use the term solicitor and the subject.

Just a handing someone a piece of paper and having them fill it out, not to even talk to them at any great length.

We do not want to see any bias induced there by them.

Q Can you continue then, on this profile of sampling, which you said is summarization of the approximately thirty to forty pages?

A All right. I think it would be helpful to have the form as well as the summary.

Well, of course, I think the questions of breakdowns by sets, race and age groups, more or less speak for themselves. You see, the sex is approximately equal between male and female. Interestingly enough, there were nineteen no responses to this particular question.

Race, you find approximately 90% Caucasian, others, the other no response, or black, or Oriental. Incidentally, you notice that the number of Oriental population rather, insignificantly, in this particular survey, the data from the census indicates that the population of non-whites in 1970, in particular, the black population was approximately 4.2, 4.3 percent. This indicates that it's five percent.

(Continued on next page.)

Q So, this was a fair reflection or a close reflection of what the actual population was.

A Very close. Well, again, most of those interviewed were inthe twenty to thirty-nine group. There were twenty-six percent in the over thirty-nine and thirty-one in the under twenty group.

That's a little bit large for the under twenty group, a little bit higher than should be.

On the question of family income; this is very delicate area to begin with, this is a difficult question to put on a form. Because a lot of people don't like to answer it and some do not feel that they're competent to answer it.

We did specifically, I believe, yes on this question, leave a place on the questionnare where they could check, do not know. And there was a very definite reason for this.

People don't like to admit if they do not know. And this might force them to make a choice among the five, which is not accurate but there are young people and the age group less than twenty who might conceivably not know what the family income is.

In fact, I could imagine you could find the woman of the house who either don't know the family income or they think they know and do not, etc.

So, there was very definite reason we wanted to give the person responding to this interviewer, an opportunity to check that and a number did check. You find a seventeen percent response to this one category alone. All right.

Now, if you go down the other categories you can see the breakdown in people as to how they responded. Once again, it is difficult here to know how accurate those particular things are. The males who responded, who were heads of households, of course, would know the answer to this accurately.

Any other members of the household, it is conceivable the question could have been answered incorrectly. Those are only approximate numbers. All right. And we can't vouch 100% for the accuracy of this particular breakdown.

We wouldn't want to.

Q The sex, just go back, sex male and female. How does that reflect the information which you received out of the 1970 survey of Nassau County?

A That's directly correct.

I would say, everything here on those questions of sex, race, age group, no, I would say therein on the questions of sex and race we're within certainly, within two or three persons all the way.

Q Family next.

Has that changed to any great extent?

A What is hard to say. There is a -- the census attempts to breakdown by properly -- the group of lower income group, a very important statistic to know in each of these -- would be the sign of the family. We did not include that particular question on the survey. So, when we say a family income of say $15,000 that income is not adjusted to the size of the family. It just says that is the family income.

So the survey is a little bit inadequate in that regard when we try to associate with the standard of living, we do have a problem. However, very fortunately this particular case, when we do get into the actual breakdowns, you'll find that the income was not a significant factor in the response to the questions which were really interested in determining.

If it had been then, I would say we would have a little bit of difficulty here. But that's we'll point out later.

Q Residential area can tell us how that reflects the 1970 census or in effect what's the results on that you have?

A We did not get as good a breakdown as we wanted

here.

The medium income over 20,000 and medium below 10,000, you'll find we had very few respondents. I would like to point out here that it was for that reason that when we looked at the breakdown on the pages that fold, we did not include this as one of the categories because we're simply not confident of this particular breakdown. Why this occurred, I cannot say. All right.

Perhaps we could have, we should have, chosen areas in those particular incomes according to the map. Maybe we should have sent the people right into the heart of the area.

The one last comment on this: the reasons for asking this particular question in the first place, was because of a theory that we had when we were doing this question.

That perhaps it's not the actual income that determines your view. But it may be more dependent on the kind of area thatyou live in.

Now, the only way we can categorize, kind of area and still be able to use this data, would be to use the medium income group.

For instance, if I am one who earns $30,000, but for some reason lives in a low income area: I may have a view consistent with the views of my neighbors and not so

much a view associated with my income. This was the reason for even asking this question in the firstplace.

Q But on those two questions, did you say so that there was any relationship in your later survey between either family income or residential areas as to what the views were that were solicited?

A We did not examine the residential area category as I said. Because these are definitely poor breakdowns that we got in regard to medium income below 10,000.

We did not see a sizeable difference. In fact, they are on the second page and we can go into those when the time comes.

Q Now, in response to the question responsive authority, that's the first question which is the same question as was previously asked that you're driving at an excessive speed, which police officer's authority are you more likely to respect.

And I think Officer A is the crew cut officer and B is the one with the more liberal type of hair. Can you tell us what the conclusion or response was to that?

A The predominate opinion here, is the no difference. 66 ro 67% of the people just chose not to have an opinion on that. Or indicated that when you say "no difference" remember it doesn't mean that there is absolutely

no difference. It just means that that individual does not have a sufficient strong opinion to be able to say which officer would have more authority then the other and same with question B, again.

You see, here --

Q D is the question as to, "If you need some help so to speak and there are two police officers sitting in a precinct house, different desks, who do you address yourself to?"

Again, the predominant opinion is the "no difference". It's not quite as staggering a percentage, as you see to the response to the first question, but it is still an overwhelminly large number. I would like to clarify that point because I was asked the last time I appeared as to why a number like that, 53, 54% is considered unoverwhelming number. We have to be careful of psychology in numbers here.

When people think a mere number like 55%, it doesn't sound very big, in any terms of 55% a little more than half as opposed to 45%, but in this case we have a situation where there are three responses to a particular question.

Now, if an individual did not know how to answer this question, this individual could have tossed a coin or by some random process just given any old answer. The mathematical probabilities would say by the time you got all

done if everyone answered that way, there would be 33% of everyone answering each of the categories. So, 33% is a so-called fair share for each possible response. Now, 54 or if I can say 55%, as opposed to 33%, is a sizeable favoritism tothis particular question.

This is by what I say a number like 55% is a very large number, I mean it. In this context, where there are three possibilities for one of the three possibilities to claim a 55% response, is an exceedingly large number.

MR. SCHULZ: Excuse me, your Honor, where do we have the 55%? I lost him.

Q Response to --

A Actually 53. --

MR. SCHULZ: No difference.

THE WITNESS: Right.

Q No difference, 66.3% in response to authority.

A That's just a much larger --

Q Of course, to that issue would add if you wanted to now, in relation that's a -- if we were to try to show I suppose its purpose, the allegation of the county that it would somehow affect the police work, you would add I assume the officer B who is the hair slightly over the collar to -- 66% to determine how many persons would respond just as quickly if not quicker, with the person with the longer hair.

A If we were to pose the question, is shorter hair better in some form or another, in order to be able to show the answer to that question, were yes, you would have to see a better than 50% at least response to Officer A as you can see, we've already come close to that.

You would lump B and no difference together if that were the only question you were trying to answer.

Q In response to that question the answer would be --

MR. SCHULMAN: If your Honor please, are we now dealing with a question which is not on the document?

THE COURT: That's right. It's not precisely on the document.

MR. SCHULMAN: I object to that question.

THE COURT: Overruled.

MR. SCHULMAN: That's more than speculative.

THE COURT: No. I'll let Mr. Carlino answer as an expert to interpret the figures.

A Perhaps my answer was misunderstood.

If we were to try to set out to prove that short hair is something that the public prefers, we would ask the same questions, all right.

It would be after we got the results back, what would be required as a result in order to answer yes to that

Carline-direct 17

question. What was that, Mr. Cooper said?

MR. COOPER: If your Honor please, Mr. Carline is saying if persons looking for that information would ask the same question.

Is a further reason for my voicing my objection, because they didn't ask the same question.

MR. COOPER: But the question in this case is really, does long hair impair the image of the authority of the Police Department and so, the question more properly is, from those figures and statistics, what percentage of the population do you believe would not respect the authority of the Police Department.

MR. COOPER: If your Honor please,

MR COOPER: I think Mr. Carline, you would give the same answer that you just gave to the other question?

MR HIGGS: That's right.

MR. COOPER: I don't know that he has a right to give the same answer because I think that we are bound in this allowed survey by a determination between a crew cut and long hair. And we can't say, spoke to you late. If the hair was a little longer than crew cut, what would the answer be?

If it was a little longer than that, what would

be the answer?

We have specific questions here.

THE COURT: All I say, the witness is doing is interpreting the results of the poll. I don't think he's bound to adhere strictly to the questions asked and just read the results.

MR. SCHULTZ: By the same token, there was a poll taken as to which of several candidates were favored for public office, I do not think you can read into it how candidate C who is running for another office, but on the other party line --

THE COURT: It's not the same thing. I don't think -- I think the analogy is imprecise.

MR. SCHULTZ: So far.

THE COURT: I think it's almost like saying, if you had three candidates in the field what percentage first, who got the greater percentage of the votes and then, how many favored one candidate. I think that's more accurate of an analogy.

No, I'll allow this.

I think the interpretation in the framework of the issues of this case, in other words, bring the findings into this case, relating them to the issues of this case is an important --

MR. SCHULTZ: I know it is.

THE COURT: To bring the witness in.

MR. SCHULTZ: They're bound by the questions they ask.

THE COURT: That's right.

The questions they ask are the only questions that relate to the results and the results reflect the questions that are asked.

Now, if the witness is asked to interpret those answers, what do they mean on the issues in this case? The County says that long hair and sideburns are abundant.

MR. SCHULTZ: Nobody asked any people what you think of sideburns. Nobody asked any people what you think of goatees.

MR. HARTMAN: That's like --

THE COURT: The question isn't what you think of them.

MR. SCHULTZ: Who do you prefer?

THE COURT: Interpreting those results: can you express an opinion on what percentage of the people of Nassau County would show less authority before a policeman with a beard?

MR. SCHULTZ: May I see the question that was

asked, if your Honor please.

THE COURT: "Pork chops" for sideburns and long FuManChu mustaches and hair below the collar.

MR. SCHULTZ: If your Honor please --

THE COURT: I think that the opinion comes within the expertise of --

MR. SCHULTZ: If your Honor please, I think that the discussion between the Court and counsel in this issue is a very healthy one because dealing with appendix two on the questions that were put to these people, "You are driving at an excessive speed and are signaled to pull over. Which officer's authority are you more likely to respect? Officer A who had the crew cut and no facial hair or Officer B, who has hair slightly over the collar prominent sideburns and mustache"? There is nothing in there about more than a crew cut.

THE COURT: That's proper cross-examination. You can ask this witness how he thinks the poll would be affected, if affected at all. If you more graphically described the policeman involved or if the situation were different than driving a car. That all comes in to it, but those are questions to ask the expert.

All I'm saying on the direct examination, the interpretation of the results of the sampling and relating the results to the issue in this case is entirely proper.

I think the witness, expressed an opinion on--

MR. SCHULTZ: Made my objection.

THE COURT: You have cross-examination of the point you just made.

MR. HARTMAN: I might indicate also, Mr. Schultz, we do have Dr. Martindale present, who did phrase those questions. He's available for cross-examination today.

I believe Mr. Schultz had reserved his right to cross-examine him. He is available to be cross-examined.

(Continued on next page.)

Q Mr. Carlino, is Dr. Martindale the person who did phrase those questions with the thought in mind of the purpose for which we elicited those questions?

A That is correct.

Q Now, can you -- I won't ask you to go through each page, some thirty or forty of them.

Can you possibly go through the pages as expeditiously, as quickly, as you can. Just explain generally what this conclusionary page or first page was arrived at based on those other pages that show the breakdown and what relevance the various questions had in coming to this conclusion.

A All right. Why don't we just look at page two so you can see how those breakdowns were done. We may have to go over to page three and four.

But question, page two covers this breakdown by income only.

Q Before you go into that, I guess it's self-explanatory how was this done, by a computer, some sort of

A Of course.

Q Can you explain what type of computer?

A It was a IBM Model 360-75 at Grumman. I believe Data Institute.

THE COURT: Youre a mathematician, you don't

take care of the spelling. He's being presented as an expert in mathematics. Go ahead.

A All right.

I think without going into details, if you look at those at a glance from income 20,000 and over, all the way down to the bottom of the page where you see income below 10,000, you can see how the percentages vary.

You look for Question 1, I see for instance, on the income 20,000 or over the variation is 13.9, 14.1, 17.6 and for income below 10,000, 20.2, 17.4, 51.5.

Q What if anything does this indicate to you?

A Well, there is some variation. It seems to occur between let's say, the above 20,000 to the below 10,000. But if you go down category by category, the variation between category is very slight.

So, we have room to say there is no variation but it would be correct to say that in every group, the overall thrust of the response is exactly the same: namely, the predominant opinion is still no difference category. Although considerably lower income groups do have more tendency to offer an opinion than the higher income groups.

You find a similar thing with question B, Question 2, I'm sorry.

Q Now, the next one at the bottom of page two,

continuing on to page three, you talk about total ages.

A That's not correct.

First, we have age under twenty.

Q I see, right.

A I must apologize. It is impossible to get the computer to print things out exactly in order that's most readable. The computer wants to be programmed in a local order so having done the question on income grouping, it now turns to the question of age.

Then, takes each age group, once again, goes on to the income.

Q So, you have the total age twenty and various income groups.

A Yes.

Q Can you tell us again, professor, what if anything resulted or any different results from this?

A Again, in the age under twenty, you do find more of a preference here on Officer B. But again, it's still -- you find the same 60 some odd percent offering no opinion to Question 1 and the 40, well, actually here it's more of a 40% 30 and 40% no response to Number 2. There seems to be in the lower age groups, all right, a favoritism towards the longer-haired officer.

You find just the opposite among the over thirty-

hair groups. There's a slight favoritism towards the shorter hair officer.

Q But is a prominent result, still the no difference?

A Still no difference.

Q Next total age, twenty to thirty-nine and various income starts on bottom page three, going to the bottom of page four, I mean middle of page four.

Again, is this generally the same type of no response type of situation?

A Well, you should look at the middle of page four, which shows the totals for age over thirty-nine.

Having already established that income is not a particularly significant factor, it's -- we don't have to look at all of the breakdowns. The age, now is something we would want to turn out attention to. You should find on the questionof authority, the age over thirty-nine does show a preference for Officer A, for those who do have an opinion.

For those who do not have an opinion, again it's 60% right for the first queation and 59% for the second question.

All right, but of those expressed opinions, the favoritism here goes to Officer A, as where the younger groups, it goes to Officer B.

Q And now, you talk about the totals. You took it in the -- because of causation, I believe that's middle of page five.

A That's correct.

Q Totals as far as caucasions are concerned, is this of any significance? Different from the general determination that was made?

A No, this goes well in line with the overall totals. You must remember that 90% is caucasion, so you would expect this. These are almost identical to the total

Q So, that I guess, I guess page five and six and seven, again, are pretty much the same as the total survey is.

Regarding this age group and the income bracket is that correct?

A Yes.

Q Then, we have totals, black. Can you tell us how this determination reflects the conclusion that was reached on page one?

A Blacks.

Q That's bottom of page eight.

A Bottom of page eight. And first of all, the exact percentages here are probably not as reliable as the percentages on the total becaue of the lower numbers of

persons interviewed.

All right, we find here there were less than 100%. Let me check that. It does appear to be less than 100%.

Q It would be 5% of --

A All right. So, the exact percentages could vary more, but I would say that there are enough persons here to indicate that that again, there is a more -- more of a response here to answer the question.

In other words, there is a little bit less no difference, to the 57% no difference, here. Nor most of the sample itself is over 60 -- I'm looking at Question number -- all right.

And a slight favoritism for Officer A, of those who do respond. In the second question, second question 55% or 55.4%, no difference. That's about the rest of the way the rest of the sample goes and a slightly favoritism for Officer B, all right.

I think this is important to note because when you're talking about persons who are black, I think the question of the long hair, the hair style of long hair, sideburns is not really the same.

We're not talking the same kind of hair style.

Blacks, of course, have an Afro haircut, which

are differnt from the kinds of hair cuts we're talking about here. So, when blacks are asked to associate with a police officer, whose hair when it is one or the other, generally speaking, you would expect the black to be associating with a white police officer and trying to offer an opinion here.

So, it is good that we look at this opinion versus the opinion of caucasions.

Q I see. I do note as because you said there is less than 100 some of those results were quite different.

For instance, on the bottom of page nine where you talked about totals of black age under twenty, income 20,000 and over. The family income that 100% of them, either had no difference or officer B.

A If you look at the numbers here on those categories, the numbers of persons involved are too small for those statistics to be reliable.

Q I resume --

A You can actually see how many. Where are you looking?

Q Bottom of page nine -- three, yes.

A Exactly three people.

Q I see. The numbers next to the persons are the numbers of peoples that --

A That's right.

So, we cannot rely on those statistics at all in terms of breakdowns.

Q When you talked about three people.

A Right.

Q Now, going, skipping through the black and we talk about black under thirty-nine. Now, you talk about oriental and again, oriental breakdown. You're talking about just a handful of people.

A That's right.

Q But those statistics are available and it became part of the conclusion, is that correct?

A That's correct.

Q I want to ask you about all of those, but they are present here. You go to the bottom, middle page fifteen, the fifth paragraph down and they talk about totals, male.

Now, that totals male, regarless.

A Of any other.

Q Can you tell me was there any significance to be seen in that?

A Seen in that? No, the percentage for the grand total and the percentages among males are all within one or two percent points of the total.

So, I can't see any difference there.

Q Then, on page, bottom of page fifteen and

throughout page sixteen, you then talk about males in the various income brackets.

Again, is there anything to be noticed there, any significant difference from the conclusion.

A None that I can find looking at those. Again, we're getting -- we're getting back to the original points. We didn't originally notice any variation among the income brackets to begin with.

I can't see offhand here any particular variation.

Q I do notice more people in looking at this chart, also the conclusion, are more liable to express an opinion when it comes to the second question about the approachability of the two officers at the desk A and B, as compared to being apprehended.

It seems that there is more of a no difference, when they're apprehended. They'll stop for anybody so to speak as to approachable where they might have more of a chance to reflect.

Do you conclude anyting from the results on those questions?

A Oh yes. I think when you talk about authority versus approachability, approachability, something you have a choice about. You are questioned about things has a choice

of covering between two individuals. Naturally, they would with nothing else to go by this question, didn't indicate whether either officer was on the -- talking on the telephone. It didn't indicate whether there was a long line at somebody's desk. Only thing they had to go by was the hair style.

All right, if that's going to make a difference, those who would make a choice, all right would probably chose somebody they could probably relate to more.

This would explain why you'd find the younger people showing a little more preference for the long-haired officer; and the other people, other officer.

Authority is a different matter. When you're dealing with a person's authority, the question is authority is something you have no choice. The individuals themselves: himself, well -- determine your respect for his authority and there are many things which determine a persons respect for authority.

The question is, does the hair length seem to make a difference. All right, and we get much more of a no difference there and if you wish to infer, from that that this is not a significant factor, I suppose you would infer on the basis of the percentages.

I think, Mr. Schultz, when he questioned me last time I was here, raised that very point. If you are

pulled over by a police officer, let's say for speeding; all right. You don't know whose behind the wheel of the police car when you're being pulled over; all right.

So, you can't tell if that's a long-haired officer, short-haired officer or presumably, we're dealing from the time after you have been pulled over. You are more likely to respect one's authority more than the other. The respondent seemed to indicate, no. No authority is something else, not something that they're going to chose. It's something that they're going to see.

Q From the approachability aspect, I noticed that even at the conclusion where you talked about 17%, if there was to be interpreted in light of the questions that were asked, it would mean only 17% of the people or what would that mean?

A I'm sorry, could you --

Q On the approachability, on the conclusion on the first page -- I'm sorry, because this seems to reflect what that is. Talk about seventeen percent when they approached Officer A, as compared to a total of eighty-two percent or eighty-three percent, either have no difference or approaching Officer -- with the longer hair, what would those statistics indicate?

A It would indicate again, taking the no difference

category; 54%, if I may round that -- 54% of the people are saying that the hair length is not a basis for them to make a decision. That their choice, which they're going to have to go to, one of those two officers eventually, whether they flip a coin or whether you automatically come to a conclusion, make a turn one way or the other.

But they're saying this would not dictate their choice. The others are saying they would have a tendency, there would be more likely: all right, that this would influence the likelihood as to which officer they would turn to.

The other seventeen and twenty percent that's what they say.

Q Now, going back to the bottom of page sixteen, the totals of male in the various income brackets and in the various age brackets.

Is there any significant difference again, from your conclusion on either questions, either responses to authority or responses to the approachability? I think that's what goes on for a few pages.

A None except the difference I noted before. As it moves down to the lower income groups, little bit more of a tendency to respond to A or B as to no difference. Where we were first looking at the groups, it's still occurring [illegible]

Q Then, you total for male caucasions, is there any difference there that goes on page nineteen, twenty, twenty-one, any significant difference from the conclusions or anything to get until the middle of page twenty-two?

A No. I'm pretty much assuming anything less than five percent is not sizeable. You can argue that point but when I answer all or those questions that's the criteria I'm using for saying yes or no, five percent or thereabouts.

Q Now, you then go into the total of male black and male oriental that you should -- added into the conclusion as you pointed out professor, because of the small number of oriental males selected in neighborhoods in Nassau County out of approximately 2,000, this would not be really a big total in conclusion?

A Yes. As the breakdowns occur they become almost completely unreliable because you start to deal with five or six people or less.

Q One percent, you get a hundred percent breakdown?

A Yes.

Q One more minute, if I can ask you professor, page twenty-nine, the middle. You talk about females, page twenty-nine, middle. You talk about a total of females, total breakdown with females.

Q Now, can you tell me what if anything any variation there was as far as that was concerned? I think page twenty-nine in the middle.

A No. When I first went through those, the only variation or females that I found was that the females under age twenty on the question of approachability, did have great tendency to go to the long-haired officer.

Other than that the females and males seem to respond approximately alike to those questions.

Q So that if those pages were to be studied this would reflect the male determination as far as both questions as well as the female?

A Yes.

Q Of course, again the male black, I mean the female black, female or oriental again, are basically unreliable because of the small samples because of the survey taken?

A That's correct.

MR. HAKMAN: I have no further questions.

THE COURT: We'll take a short recess.

(A short recess was taken.)

(Continued on next page.)

ss
tam5

THE COURT: Mr. Schultz, cross-examination.

MR. HARTMAN: Another thing.

DIRECT EXAMINATION

BY MR. HARTMAN: (Cont.)

Q Mr. Carlino, I show you what purports to be a computer program for the Nassau P. B. A. Survey. That's what's written on the top. Can you tell me what that is, please?

A Yes. This is the computer program used to analyze this.

Q What do all those pages indicate all --

A Most of this computer outcome relating to the time the computer took which storage, facilities used, etcetera. This is only relevant to someone interested in Strom's programming. Somewhere in the middle of the print-out you'll find the listing of the actual --

Q Actual program, all listed there?

A Yes.

Q Is this the one that was used tfor the survey now reflected in what is I think marked as Plaintiff's exhibit 2 for identification?

A Yes. This was the program that produced that output.

MR. HARTMAN: May I have this marked for identification at this point.

THE CLERK: So marked as Plaintiff's exhibit 5 for identification.

(So marked.)

MR. HARTMAN: Your Honor, I'm not admitting into evidence that point possibly, Mr. Schultz would want to cross-examine; first, but I would reserve my right to do that until he has, which should be a combination of a voir dire and cross-examination. Would this be more satisfactory.

MR. SCHULTZ: I'm objecting to the receipt in evidence on the survey upon which you had been interrogating Mr. Carlino.

MR. HARTMAN: Well, at this point then, your Honor, I would ask that they all be admitted into evidence as Plaintiff's exhibit 1 through 5 for identification, including the box which is Plaintiff's exhibit 4 for identification.

THE COURT: Well, the objection is overruled. 2 may be marked in evidence.

THE CLERK: So marked.

THE COURT: And the objection is sustained to 3, I don't see how 3 --

MR HARTMAN: Which is 3, your Honor.

THE COURT: These are the instructions.

MR. HARTMAN: Oh, I see.

THE COURT: And the form and the names of the solicitors, but are you offering the box.

MR. HARTMAN: Yes, I think also the one sheet itself, which Mr. Carlino I think has in his possession at this time.

THE COURT: 4 and 4-A. The sample may be admitted into evidence.

THE CLERK: Plaintiff's exhibit 2, 4 and 4-A, previously marked for identification now marked in evidence.

MR. SCHULTZ: I think as far as 4-A is concerned which your Honor is now receiving in evidence, I would ask your Honor to reconsider holding it in abeyance at least until I have had some sort of a voir dire in addition to my cross-examination.

THE COURT: I'll strike it if there is anything in it that indicates that those were not the answers of the various residents.

MR. HARTMAN: Can I also ask your Honor, exhibit 5 for identification be admitted. That is, the so-called computer.

THE COURT: No relevance to this case.

MR. HARTMAN: I just -- I don't know if I made

was admitted into evidence, which is the --

THE COURT: That's 2.

MR. HARTMAN: Actual book itself, Plaintiff's exhibit -- what is that.

THE CLERK: Wasn't marked.

MR. HARTMAN: Wasn't marked for identification, if your Honor wants to receive that.

THE COURT: That's all the census material, right.

THE WITNESS: That's right.

THE COURT: Certainly don't need a whole book. It's been marked for identification. The page has been referred to, right.

MR. SCHULTZ: If your Honor pleases, the only part of that book referred to by the witness was a map of Nassau County, Suffolk County, with different coloring on it, which had some significance as to the red and the yellow and the white color. As to the source or medium of income, he has, Mr. Carlino testified that people were asked where do you live and what is your income. And the fact that a person may live in Sands Point, which might be a high income area might be a highest income area, he might be living on the estate and earning $10,000 a year, he might be

living in a small house on this side street.

So, therefore, that book if it's just to prove the type of income, certainly immaterial. It has no probative value at this time.

MR. HARTMAN: The purpose was to show that the survey, somewhat reflected or did reflect the --

THE COURT: Marked for identification as the map that was used by the witness may be marked in evidence.

THE CLERK: Book marked Plaintiff's exhibit 6 and the map is marked 6-A, in evidence.

(So marked.)

MR. SCHULTZ: Are you aware that's mine.

MR. HARTMAN: Yes.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Mr. Carlino, you testified I think either today or on your previous Court session that you were employed at the Nassau County Community College in Mathematics Department, is that correct?

A That's correct.

Q And your specialty is in mathematics, am I correct about that?

A Yes. The name of the department is Mathematics

and Computer Science. That's the department.

Q What is a computer science?

A Curriculum-wise and elementary wise, in computer programming --

Q What is computer programming?

A Might call it an art of directing a machine to do a certain task. Data analysis, something which could be done by hand but would take a great deal of time for an individual to do.

Q So, there are machines now, which sort of expedite what we used to do by hand as far as multiplication, division, addition, subtraction, arriving at percentages and what have you. Am I right about that?

A That's right.

Q And is the course given in a classroom?

A Yes.

Q Are the students in attendance at that course withdrawn.

Would you say the students that take that particular course do all of their schoolwork in the classroom?

A No. They are asked and write the programs on the college computer more or less as a practice. That would come under the category of laboratory work.

Q Where is the laboratory?

A In Nassau Community College.

Q And the computers are in the college, aren't they?

A That's correct.

Q They don't go out on the street and work up any sort of a program sort of an internship, do that?

A Not in any of my courses they do not.

Q How long have you been teaching the course at the Nassau County Community College?

A I have been employed there since September of 1965. I've not always taught those particular courses, but I have been employed there since 1965.

Q How long have you been teaching the present course?

A Well, it varies from semester. I don't always teach this course.

Q What other courses do you teach?

A I teach mathematic courses, college algebra, calculus, etcetera. The full range of a two-year college curriculum in mathematics.

Q Would you say then that when you talk about algebra and trigonometry and geometry, you're talking about the type of mathematics that have been taught in the colleges

8 Carlino-cross

for many many years?

A Yes.

Q The only part, the computer place is to expedite that type of work, am I right?

A Not always. It is not always used to expedite. The computer cannot do algebra, trigonometry and calculus, but any numerical work insofar as that may relate to those other courses that's what we teach, yes.

Q You teach the taking of polls?

A No, sir.

Q Have you ever taken a poll?

A Yes. I participated in polls. I never supervised one myself.

Q When did you last participate in taking a poll?

A I have assisted as a consultant for Columbia School of Public Health. Of course, there it would be inappropriate to call this a poll. This is more of a detailed survey dealing with interviews of subjects to determine, give insight as to their views as to a number of items.

I have never been one to assist in the conducting of interviews because I am not trained. But I have taken the data and gone through the computers and analyzed it for them.

Q You're not trained in the taking of a poll?

A I'm not trained in the interview of a subject.

I am trained in the aspect of data analysis.

Q So, when you talk about what you did at Columbia University, are you talking about interviewing students in connection with this desirability of subject matter?

A No. These were not students. These were people in the community and I'm not at liberty to disclose the kind of survey it was. But they were not surveys, they were intensive interviews sponsored under the offices of Aeronautics and Space Administration to determine certain community views on certain subjects.

Q You're saying you're not at liberty because it's confidential?

A - yes.

Q Does it deal with National defense?

A It deals with National policy or potential deals with National policy.

Q But in your opinion, it's confidential?

A It is confidential as far as my relationship to Columbia University.

Q I won't probe it if it's confidential.

Is it, Mr. Carlino, or Professor Carlino or Doctor?

A I really don't mind. Formally my title is

Professor.

Q Professor, the poll which is now the book marked exhibit 2.

THE CLERK: That's correct.

THE COURT: In evidence. Did you go out in connection with that poll.

THE WITNESS: I did not go out and conduct any of the soliciting, no I did not.

Q Did you do any of the soliciting being conducted?

A Did I go out with anybody? No, I did not.

Q You don't know who they talked to, except that they came back with documents which is now a part of 4-A in evidence, am I right?

A That's correct.

Q I show you one of the items in 4-A and --

MR. SCHULTZ: And, your Honor, I gather that 4-A, constitutes the entire book.

THE COURT: Yes. 4 contains the book, 4-A, is one of the samplings from the book.

Q Professor Carlino, I show you 4-A and ask you whether or not you can identity the initials in the lower right-hand corner?

A I believe the name of the person is --

Q I asked you, if you can identify it?

A I can identify them as they correspond to a set of initials that I have back in my office, which was the initials each of those individuals I sent out to do, conduct the --

Q Did you compare the initials which are back in your office with the initials on that particular page?

A I did not personally do all of it, but that was done at the time those were being key-punched for use on the computer. Those forms and the very purpose for asking for these solicitors' initials that was that each form had those initials on the form and on the sheet that they handed in.

Q Did you see the solicitor initial --

A No, this was done at the time when the solicitor received this questionnaire back from the individual.

Q Did you see any of the solicitors sign any of the 1978 pages?

A No. I would have had to have been out there to see that.

Q Can you state with any degree of certainty that the initials in the lower right-hand corner are the initials of that particular solicitor?

A My degree --

MR. HARTMAN: I would object. I don't know what

"any degree of certainty" means, your Honor, compared the other initials.

THE COURT: Can you answer the question.

THE WITNESS: I was going to answer that. I based the selection of solicitors on people I felt were reliable.

THE COURT: Do you recognize the initials.

THE WITNESS: Yes. This was Mr. Blume, I believe.

THE COURT: Mace Blume.

Q Do you know whether or not Mace Blume initialed that page? Do you know his handwriting?

A I don't know his handwriting very well. I do work in the same office that Mr. Mace Blume is employed there.

Q What I'm getting at is you say you don't know his handwriting very well?

A On the basis of his handwriting, I would not be able to say that this was Mr. Mace Blume's initials unless he himself came here and showed me or at least showed me the sheet that he signed initially.

Q Did your Honor hear the last answer?

THE COURT: No, I did not.

MR. SCHULTZ: Would you read it back, please.

(Record read.)

Q Is the same thing true with the other 1977 items in exhibit 4 in evidence?

A In each case the initials had to match the initials on the form that I received from the individuals involved.

Q In other words, if Louis Schultz was one of your solicitors and Louis Schultz had 400 people to interview and 400 pages were brought into you with the initials L.S., you would want to assume that that was Louis Schultz's work without noticing if Louis Schultz signed those 400 pages. Am I right or not?

A No. Mr. Louis Schultz would have had to have brought those to me with the header page and signed this.

Q Are you telling me, Mr. Mace Blume brought that to you?

A Yes.

Q Professor, did he -- did he tell you he signed them?

A He signed the cover sheet.

Q In your presence?

A Yes.

Q But you can't identify his initials on that particular page; namely, 4-A?

A No. As I testified earlier, I don't know his

particular, his handwriting in general. But if this particular case as he handed it to me, he was to sign it and give the -- put his initials.

He also handed me basic forms, which I was not present to see the initials. All right, the key-puncher and most of the people doing the key-punching were to check each form and make sure they were initialled correctly. If there was any form not initialled, it was not accepted.

MR. HARTMAN: If your Honor pleases, Mr. Schultz, I do have the originals with the initials of each of those individuals on it. If you would wish to check the initials on this I would present these to Mr. Schultz if he wishes.

THE COURT: You mean the signatures.

MR. HARTMAN: I have the signatures, initials of each of those individuals.

THE COURT: You want to see it?

MR. SCHULTZ: I'm very thankful to Mr. Hartman for wanting to assist me.

(Continued on next page.)

Rt:jm
11am46

Q Professor, without identifying the poll taken, because I'm not interested except that the M.E. came up on Item 1A. Will you give me their identification as to occupation or age or other physical description?

THE COURT: Mr. Macebloom?

MR. SCHULTZ: I don't want the name.

THE COURT: Each one?

MR. SCHULTZ: I don't want the names. What kind of people were there? How many of each particular category?

A "One housewife, six students and one occupation unknown".

Q And now, you talked about one housewife. Is she employed at the college?

A No.

Q Did you ever meet her prior to the taking of this poll? Do you know who she is?

A I was introduced to her.

Q And other than being introduced to her and discussing it with her, you know nothing about her?

A No.

Q How old is she?

A I didn't ask her her age. I believe she's approximately -- I would say about 24 or 25, mid-twenties

Q You don't know how many children she has?

A No.

Q What does her husband do for a living?

A I don't know.

Q Now, those six students; are they in your particular classes in mathematics or computer programming?

A No. None of them -- correct, one student is in one of my program classes, but the others are not.

Q Who selected these people to take polls?

A Well, I made the selection. I asked others to find persons interested in doing this and I had to meet each particular one before I would make the selection.

Q Professor Carlino, how many times prior to the taking of this particular poll, which is 2 in evidence, Plaintiff's Exhibit 2 in evidence -- how many times prior to the taking of that poll did the housewife take any previous polls?

A I do not know if she ever took any previous polls.

Q How many times prior to the taking of Exhibit 2 in evidence did the six students take any previous polls?

A Again, the same answer. I do not know of any of them ever --

Q How many times prior to the taking of the poll,

which is Exhibit 2 in evidence, did the person whose occupation you say is unknown, take a previous poll?

A The same answer to that question I have.

Q Do you know how long the poll took?

A The individuals, as they came back, told me that it was taking approximately five to six hours to get two hundred,or two hundred responses, approximately that long. We asked each one to try to get approximately two hundred and fifty. They indicated after about five, six hours --

Q So, in other words, when you talk about five or six hours, that's five or six hours for each to get two hundred so that if you have eight, you have sixteen hundred, is that correct?

A That's right.

Q But you did wind up with nineteen hundred and seventy-eight?

A Yes. Two of these individuals went on two shifts. The target was two thousand.

Q Tell me about the six students. What is their average age?

A Our average students are eighteen or nineteen years old; that's by and large; that's what most of the students are. Those people were about in that category.

Q Do you know whether or not these particular

pollsters, when they would approach a person for the purpose of obtaining an answer to what is the number of documents in Exhibit 4 in evidence, had any conversation with those people?

A They were specifically instructed --

Q Do you know?

A Do I know? No, I was not a witness to those taking surveys.

Q As far as you know, you don't know whether or not those checkmarks which are set down, were written by the people interviewed?

A I have no direct witness.

Q You don't know? You can't so testify?

A No, I cannot testify to that.

Q And for all you know, those checkmarks might have been written down by the people taking the poll?

MR. HARTMAN: Your Honor, I'm going to object.

THE COURT: Overruled. I'll allow it.

A I have no idea.

Q Have no idea?

MR. SCHULTZ: Shall we suspend?

THE COURT: No.

Q You have, I think, in your possession --

THE COURT: Excuse me, Mr. Schultz.

We've got all day now, Mr. Schultz.

MR. SCHULTZ: I wasn't going to rush anyway, your Honor.

Q Tell me about the particular person who you say has an occupation which is unknown to you. How did you find him or her?

A It was a her. She was introduced to me by one of the other solicitors and indicated she would be available to do this. I never got around to asking anyone who she was or what she did other than her --

Q How did she come to your attention?

A I indicated she was introduced to me by one of the other solicitors as one who would be available.

Q Were those solicitors paid any amount of money?

A Yes. Paid twenty-five dollars each.

Q For the work that they were doing?

A For a packet of two hundred items.

Q What is the average age of the people who did the soliciting, again?

A Eighteen or nineteen.

Q As you testified a moment ago, that as far as the making of the checkmarks on those particular documents, since you did not see the making of the checkmarks, you can't say who made them?

A That's correct.

Q And you don't know whether or not they might not have even been made by the solicitors himself or herself?

MR. HARTMAN: I would object. Those are the exact same questions --

MR. SCHULTZ: I think your Honor was occupied at the time.

THE COURT: I heard you. Ask whether he knew whether the solicitor himself filled everything out and gave the answers as much designated petitions for candidates do. I heard that.

All that is possible. It all goes to credibility.

MR. SCHULTZ: But it also goes to admissibility of the document.

THE COURT: I don't believe it does. You're attacking the witness. I should give those results. There is hardly a method of extensive sampling that cannot be attacked on that ground. No one expects, we have natural sampling of thousands of interviewers, we'll call them, throughout the country, is he required to bring in one thousand interviewers because one might cheat?

Again, there is a period of probability and all depends on the reliability of the solicitors and the real cross-examination to attack the methods that the

witness has presented. You can go beyond that. Here you only have eight solicitors and you can bring all eight in.

MR. SCHULTZ: If your Honor please, I think your Honor can take judicial notice of the fact of a designating petition was brought to you under attack in a proceeding which I'm sure you must have had when you were still sitting in the Supreme Court, Queens County.

If there was any question put to the witnesses to who signed the petition, said I can't say it was signed and there were enough questions, couldn't be answered. That petition would therefore have to be stricken.

THE COURT: That's statutory and we're governed by the statute. There are cases where the statute requires they not witness every signature.

I'm sorry, the subscribing witness must say that he saw --

MR. SCHULTZ: Or a notary public.

THE COUFT: That hasn't presented fraudulent petitions, has it?

MR. SCHULTZ: No, it hasn't, your Honor. Unfortunately, --

THE COURT: So, again, the question of method, procedure, here. The witness comes in and says there are eight solicitors who have no loyalty to a candidate. Six are students and one is a housewife and one occupation unknown. They get about ten cents a signature for asking people whether they wouldn't sign or answer the questions.

Off the top of my head, I would say there are a lot more reliable people that submit designated petitions. What interest have they got to submit a fraudulent answer?

MR. SCHULTZ: Spending the afternoon somewhere else.

THE COURT: I say that's a possibility. Examine in the answer, see if they're all the same handwriting. You have seen petitions, undoubtedly, with the same pen, same handwriting, same swirls, the "p's" and the "g's".

MR. SCHULTZ: Those are checkmarks, not things like that.

THE COURT: Those are only checkmarks.

MR. SCHULTZ: Also, the name of the community

THE COURT: So, there is a handwriting.

(continued on next page)

BY MR. SCHULTZ:

Q Do you know how many communities are involved in all of these petitions?

A No, I don't. I did not take the time to go through and count them up.

Q Do you know how many of them are from Rockville Centre or from Freeport or from Hempstead?

A No.

Q Or from Laurel Hollow?

MR. HARTMAN: I assume all.

Q You don't know?

A I do not.

MR. SCHULTZ: The reason I ask that, your Honor, I think that I indicated on previous questions put to Mr. Carlino that at the last --

THE COURT: All right. Laurel Hollow, Suffolk County.

MR. SCHULTZ: Laurel Hollow has its own --

MR. HARTMAN: Laurel Harbor in Suffolk County --

MR. SCHULTZ: But there are twenty-three police departments in Nassau County. Other than Nassau County three departments. If your Honor wants --

THE COURT: I thought Laurel Hollow was in Suffolk County.

MR. SCHULTZ: It's not too far from the border of Suffolk County.

THE COURT: I understand my law clerk lives near there.

MR. SCHULTZ: She knows there is a three-man police department there.

MR. HARTMAN: Nine.

MR. SCHULTZ: Now it's nine.

Not all full-time police officers either.

(continued on next page)

Rubenstein
TlamR7
follows

Q Professor Carlino, you have in front of you Appendix 2?

A Yes.

Q At the top of the page, "Imagine two police officers as follows: Officer A, crewcut, no facial hair."

Is that intended to describe a member of the Nassau County police officers so that you could reach a conclusion as to the desirability of that type of police officer for either obedience when you're stopped for an alleged traffic violation or whether you go for assistance to the police precinct?

MR. HARTMAN: Your Honor, may I object. I do have Dr. Martindale here. He did phrase those questions for purposes -- I think Mr. Carlino, Professor Carlino is here for the purpose of the poll, the mathematics of the survey. I think this possibly is beyond that which Mr., Professor Carlino was really here to testify.

THE COURT: If it's outside his field, he'll say so.

MR. SCHULTZ: Fine. If it's outside of his field, your Honor, I would like to ask your Honor to strike from the record that evidence which he gave.

THE COURT: Why don't we ask him if it's outsid

of his field, your Honor, I would like to ask your Honor to strike from the record that evidence which he gave.

THE COURT: Why don't we ask him if it's outside his field.

Q Is that outside of your field?

A I know the answer to the question.

THE COURT: Can you --

Q Is it outside your field?

A But it is -- outside my field, correct.

THE COURT: Motion to strike Professor Carlino's testimony denied. The testimony he did give was within his field.

MR. SCHULTZ: What testimony?

THE COURT: I was sitting here all morning.

MR. SCHULTZ: Excuse me, I'm not being facetious, your Honor.

THE COURT: I thought you wanted to strike all his testimony.

MR. SCHULTZ: Oh, no. I want to strike from the record that testimony which he gave as to whether or not that would include people with longer hair than was contained in the question that was submitted to these 1978 people. Because that would similarly be

outside his field.

THE COURT: Do you understand that?

MR. SCHULTZ: Do you remember putting that question to him, your Honor?

MR. HARTMAN: I don't understand the question.

MR. SCHULTZ: And I objected. In other words, there was a question put to Professor Carlino either by you or by Mr. Hartman as to whether or not the same type of answer would have been given by these people if the hair was a little longer, and I say that's not in the question, and he's bound by the question. That would also be --

MR. HARTMAN: Outside his field. That wasn't the question before.

THE COURT: It was at our last session.

MR. SCHULTZ: Today.

MR. HARTMAN: Can you answer it?

THE WITNESS: That was not the question. The question was a hypothetical one dealing with a survey which attempted to prove that short hair was better and my answer related to how you would deal with the numbers.

THE COURT: Now, I know what he's talking about.

All right, Professor Carlino, that only dealt

how would you would interpret the results and I had a discussion on at that time, definitely within the field of this witness.

MR. SCHULTZ: I don't know whether that's any more in the field of this witness rather than the intent that he says is now outside his field.

THE COURT: I rule it is.

MR. SCHULTZ: May I have an objection?

THE COURT: Sure.

BY MR. SCHULTZ:

Q Do you know of your own knowledge or have you been told, Professor Carlino, how many police officers we have in Nassau County?

A You mean --

Q Numerically.

A Nassau.

Q County police force.

A I believe the number is 4,000.

Q Somewhere between 3500 and 4,000 we'll say?

THE COURT: Do you know how many of the 3500 to 4,000 police officers have crewcut hair?

THE WITNESS: No, I do not know the answer to that question.

Q Would you know whether or not it was less than

5 Carlino-cross

50 or around the number 50 of the 4,000?

A I don't ever recall asking this question of anyone else. And so, therefore, I'm not going to answer.

Q Tell me what you mean if you know, even though the question was put or suggested by Professor Martindale, "Hair slightly over the collar," simple enough. Tell me what you mean by that.

MR. HARTMAN: I would have no objection if the question were phrased, what Dr. Martindale explained.

MR. SCHULTZ: I don't want Dr. Martindale -- If your Honor please, I don't think Mr. Hartman --

THE COURT: Now, wait. I think the -- your method of taking objection is improper.

MR. HARTMAN: I'm sorry.

THE COURT: Don't suggest a question to Mr. Schultz. But you're asking this witness next to explain what Dr. Martindale meant.

MR. SCHULTZ: No. What he means when he gave the instructions to the pollsters.

THE COURT: What did you tell the pollsters? Hair slightly over the collar?

THE WITNESS: Well, I told the pollsters was they were not in any way to discuss this with any of the subjects. It was up to the subject to decide what

they meant.

Q Now, in other words, was the instruction given by you to these eight particular youngsters and they are youngsters, because they're in their early 20's, is that correct?

A Correct.

Q Do these --

THE COURT: Understand on the New York law, now have reached their majority.

Q Compared to my age they're still youngsters. Eight people who have now reached their majority under New York law that they are to merely hand this type of questionnaire to a person and say nothing and do nothing else about it?

A Yes. That was very important. That they follow those instructions.

Q You're not there to determine whether they follow those instructions?

A Well, that's correct. But those were the instructions.

Q And you don't know whether or not the people who were given those documents to fill out, asked any questions in connection with the particular documents?

A I did ask some of the solicitors if any of that

occurred and the ones I did ask told me, "No." That did not happen, people took this.

Q How many did ask you?

A The first two. I don't even know if it was the first two. Just because.

Q You don't then, for instance, of the first two that no questions asked or would you also say that no, he was offered by those particular solicitors to the people filling out the questionnaires --

A If they had, don't. No, I did not ask them.

Q Would you know whether or not if one of the persons who was kind enough to even read the questionnaire, would ask, does it make any difference to you how I answer it?

You don't know if any such question was asked, do you?

A No. Except, as I --

Q I know what your instructions were. You said what your instructions were. But you didn't talk to those people at least, not to at least six of them?

A Yes. I think in the question I was asked on the way back, what were casual questions, how did it go? Did you follow the instruction? Et cetera. And the answers were affirmative. I received no indication at any time that anyone deviated from those instructions or any extraordinary

situations came up.

Q That's the percentage of people in the County of Nassau who are over the age of 39?

A I do not know offhand. I don't have the census book with me. The information is there.

THE COURT: Can you find it?

THE WITNESS: I'll try, if it is here.

Incidentally, I point out those sample breakdowns did not come out very well here. I believe I testified to that originally.

THE COURT: Do you have any way of finding it, Mr.Schultz? 55 percent of 40 or over, does that seem to --

THE WITNESS: No. We only got a 27 percent over 39 in our sample.

THE COURT: I know. But what --

THE WITNESS: I haven't found it in this book.

THE COURT: Some book that Mr. Schultz has in hand? Is that official?

MR. HARTMAN: We'll cover that on Mr. Lippman's testimony.

THE COURT: You might want to ask this witness assuming --

(Continued on next page.)

A Assuming that the white population over the age of 40 in Nassau County is 55 per cent.

MR. HARTMAN: I'll object.

THE COURT: Overruled. I'll allow it.

MR. HARTMAN: That's not --

MR. LIPPMAN: May I answer, Judge. Of those iliminating ages, zero to 14, it's 55 per cent male white and 41, not male white, 55 per cent, white 41 per cent and black over the age of 40.

Q Didn't you testify --

THE COURT: Excuse me. Is that a fair assumption to iliminate those from zero to 14 for this type of inquiry?

THE WITNESS: No, not at all. I would have to know how many, how much of the population you iliminated, that can change the percentages.

THE COURT: Well, would you say those from zero to 14 have an opinion as to how they would react to police officers with crewcuts or beards?

THE WITNESS: I see what you're getting at. Of course, no, I would not want to take this opinion very seriously.

THE COURT: Why not? Just iliminate no matter how many it is.

THE WITNESS: Fine. If we eliminate that it's conceivable you could come up with numbers like that. I do not know if they're correct.

THE COURT: But what we're saying is assuming that the population taking the population from age 14 up and that those over 40, 40 and over represent 55 per cent of the Nassau County population, would that in anyway change your figures?

THE WITNESS: It would not change them, no difference a category that we got because the no difference category seems to prevail even in the age over 39 group.

It could change some of the wordings on the officer B category, which I said seemed to be small to begin, so it could change some of the waiting slightly.

We did notice the over 39 group does in question one in particular, those who do offer a preference, the over 39 tend to shift their preference to officer A rather than B.

We still see a difference.

Q. Those who are over 39 with -- would practically bring themselves into the over 55 category of the caucasian

people? Because, you have separated the caucasians from blacks, am I right?

Where they do show a preference for either Officer A or Officer B, how lenient are they towards Officer A, whom you have described as the crewcut. Okay?

A I'm sorry, what was the question?

THE COURT: As only between the A and B and iliminating the B choice of no difference, those over 39 seem to prefer --

THE WITNESS: The A.

THE COURT: The A, for question one, of course.

But, of course, Mr. Schultz, that question always avoids the people who say it makes no difference and I felt that when someone says it makes no difference that the County can't say that people object to officers with beards and porkchop sideburns.

MR. SCHULTZ: Well, you know, if your Honor believes if we are going to get into a discussion as to whether people object or don't object, there may be a poll taken as to whether or not people object to a police officer carrying a weapon.

Whether they object to his carrying a nightstick, and then, if there is a sizeable group of

people who object to a weapon being carried or a nightstick being carried, then following that mandate the police commissioner must tell all police officers from now on you carry no more weapons.

THE COURT: We must start with an understanding. The position of the county, which has the burden of proving that there is not a reasonable basis for the good grooming standards and the position of the County as I understand it, is that there is a lack of respect and sense of authority for the police officer who has a beard.

THE WITNESS: That's affirmative.

THE COURT: That's affirmative. If we know the bulk of the population either haven't thought about it or doesn't care or really have consciously brought to mind, would say it makes no difference.

Now, the burden on the County under Gwynn versus Barry, is a heavy one that's why those statistic dates are interesting. It's not that it's between A and B. There are more people in Nassau County, if given that choice, would find themselves more comportable and respect the authority of a clean-shaven officer.

That is not the question. If the plaintiff

had the burden, then I might agree with you, but that's not what Gwynn had or said. That's the trouble with the position of the County.

It's the burden of proof.

MR. SCHULTZ: You know, the statistics might be interesting and might be pertinent if there was any validity to the questions asked or if there was any reliability in the sampling.

THE COURT: That's something different. I'm talking about the sampling statistics that are correct. If feel that you're misreading them. If we have a hundred people and two say I wouldn't respect the authority of a bearded police officer and one says, I would.

Now, there you have twice as many in percentage respecting the authority of the police officer without some excessive hair.

Now, if the plaintiff have the burden of showing that the people respect police officers with beards and long hair, I would say they win on those statistics for the same reason in that was the only reason in the case.

If you had the burden, you wouldn't win on those statistics either.

MR. SCHULTZ: If they wouldn't win on those statistics, if they had them they couldn't defeat beyond those statistics.

THE COURT: That doesn't follow. Cases are sometimes won or lost on burdens of proof. This appears to be one of them.

MR. HARTMAN: I think I met the burden which they are now coming forth to contradict by statistics but they are inaccurate and improper.

THE COURT: That's different. If I don't -- if I don't believe the statistics and the evidence, the opinion evidence, based on the statistics and throw all that out, then I'd have a look at what else is in.

Now, I haven't focussed on that. I think when it comes to the health hazzard and the jeapordy that officers put on by the mask that raises an interesting problem. There you have raised a serious question as to whether there is a reasonable ground for recurring the assets of hair in those areas.

That's in a different category than argument that the effectiveness of the Police Department is seriously impared by beards or officers that have long hair.

I know it's the same grooming standards, but certain types of proof is offered on one type of growth and the physical hair and another type of proof offered on the general appearance which includes the long hair.

But all I'm observing is that your attack of those who noted or made a choice between A and B, those over 39, which compiles 55 per cent of the population in Nassau County, prefer the A type, the crewcut type.

But I think that avoids the issues. I think that the parties will agree that that's what the statistics show.

But you have refused or failed to take into account that vast majority, 54 per cent one case, 60; I think 64 per cent in the other sense there is no difference or I don't press a choice.

Now, that's where the burden of proof may very well be critical.

If they had the burden then I'd turn to them and say, well, you haven't shown difference. That it doesn't affect the general public. But I must turn to you again, Gwynn versus Barry.

Q Professor Carlino, I --

THE COURT: I'm bound by it as I said. It doesn't do much good for me to express my personal opinion, but I did, already. I think the Supreme Court someday will have a look at it. But I'm a follower not a leader.

That's what the case says and I have to read the law and read it fairly.

MR. SCHULTZ: I have to even more of a follower than your Honor.

THE COURT: That's what the law is all about. That's when we say, obviously whether we like it or not, that's the law.

MR. SCHULTZ: I trust, your Honor understands my respect for the Court even though I might object or differ.

THE COURT: Listen, you have been a perfect gentleman and excellent advocate. I have no quarrel with you, I don't even criticize the position you take or the position the County takes. I'm just pointing out the problems in the context of your examination.

I told you how I understand Gwynn against Barry. Maybe you'll understand me and my rulings. You may read Gwynn versus Barry differencly. It's

not a precedence, thus it can shorten this case.

MR. SCHULTZ: Maybe I read the first one -- Gwynn against Barry decision.

THE COURT: I really like that better.

MR. SCHULTZ: Okay.

(Con'd on next page.)

Q Professor Carlino, now do you have any idea how many in the community are females?

A HOW many of the people interviewed were females? 43.7 percent responded.

Q Do you know whether or not the age bracket they gave was accurate?

A In other words, do I know if they were telling the truth when they answered?

No, of course not.

Q Do you know whether or not the income bracket they gave was accurate?

A No, not in fact. I testified to that earlier. This is a problem with this kind of a question. We can never really know if they aren't reporting the income.

Q You don't know whether they were telling the truth as far as age is concerned or as far as income is concerned?

A Can't be a hundred percent, we have to leave a certain margin there.

Q Aren't there [illegible] when being asked questions on a poll, frequent about the way they give answers?

A I don't think I understand your question.

Q I mean, well, when you asked a person in the taking of a poll, do you prefer crewcut police officers as

compared to a long-haired police officer or it doesn't make any difference, would you say that the saying who cars, that's rather a flippant attitude or makes no difference to me, would be a rather flippant, without any serious thought involved?

A That's one of the things you try to determine. We we were to take this form and remove the no difference category and in that force the person so to speak to make a choice between A or B, we would be introducing a bias as to the survey. That's when you begin to run into these difficulties. We're not really writing to answer which way to answer. Not being given the option to answer no difference. The person being interviewed may begin to subconsciously to take an attitude such as well, which way do they want me to answer. I can just answer and get on to the next question. What you say is true but it is important. It's something that we wan't to detect.

THE COURT: Excuse me. Is there no difference in any way similar to an undecided vote in poll taking before election?

THE WITNESS: That's correct. No difference means it doesn't necessarily mean absolutely no difference. It means on the basis of what I have here.

Q I haven't made up my mind.

THE COURT: Because -- Do you have any well -- I won't say opinion, but do you know of any principles in determining the undecided vote immediately before election? Doesn't that really, well, run according to the decided vote?

THE WITNESS: That was once from what I know of election service, that was the assumption used. That was before the science of surveying became as accurate as it was.

Since that time, however, on those extensive surveys the ones that really make an attempt to be 100 percent accurate, really try to call the election 'll find on him of the questionnaires, questions to background of the individuals are asked. It could turn out that many of the undecided faults in a survey type of background category, a predominant background, maybe an ethnic background or income group that's saying undecided, it may not actually be distributed equally.

In that case, what would be done. Was that vote apportioned that undecided vote would be apportioned according to its make-up, not necessarily equal. So, it's not a simple problem and at one time, of course, it did cause errors in some of the polls.

THE COURT: Of course, it's not the same because here if you follow that principle the A would win over the B. Because if those over 39 preferred the A and you questioned the vote of the no difference, then, of course, those preferring crewcut would be in a majority, except here no difference means something more.

THE WITNESS: Yes.

Q What does it mean?

A Like for the no difference.

Q What does it mean?

A Let me reiterate. It means I do not, if I were given this questionnaire asked, do you feel strongly to say Officer A or Officer B, it could mean I don't have a strong enough opinion. It could mean I can't make up my mind based on sway or it could mean just I never could do it, could mean any of those things.

THE COURT: I mean, say interpreting no difference in this case, no difference is a choice. While undecided in election polling, it's not a choice. It's undecided --

MR. SCHULTZ: Except the person you have received as an expert, your Honor, namely Professor Carlino, said one of the possible interpretations of

the no difference, I can't make up my mind.

THE COURT: I don't think it's an interpretation. I think what Professor Carlino said that in that group of no difference are also those that say they can't make up their mind. But also agree that in the group no difference, are also those that have made a choice and said no, there is no difference. I would choose either if -- if the matter was presented.

THE WITNESS: That's a possibility. I would say that there are many possibilities.

Q We're talking about possibilities.

A It's for that one category.

Q For that one category, since you have broken it down into that, my choice or I haven't made up my mind or that I don't know, yet. You don't know the breakdown among all the possibilities, choices, do you?

A That's a much more extensive kind of survey. Something of that sort, when you start to get down to those kinds of details, you're now dealing with psychological surveys. This is something that could not be done with the people that we --

Q While we're still speculating, you catch a fellow or woman who's kind enough to listen to your pollsters. Say you caught me and -- I'm willing to cooperate but I can't

make up my mind so it makes no difference. That's what --

A A very narrow one, if so.

Q But whether it's narrow or not, it is a possibility.

A I have to count that in as a possibility.

Q Now, look at page 3 of Exhibit 2 in Evidence.

MR. SCHMITZ: Would your Honor look at page 3, please.

Q Totals, age under 20, income $20,000 and over. And you have totals, age under 20, income $15,000 to $19,999. Then, you have totals, age under 20, income 20,000 to 1499 and totals, age under 20, income 10,000 to eleven ninety-nine. Then, total, age 20, income below $10,000.

Are you telling us from that page 3 that those people who were interviewed, whose ages were under 20 had an income of 20,000 over or 15 to 19,999 or 10,000 to 14,00[illegible]?

THE COURT: Not at all. This was -- represents the family income.

Q You asked an 18 year old boy, how much your father makes?

A That's right. And he puts it down or puts down, don't know. I think previously I indicated that was one of the --

Q Do you have any here that says, "don't know"?

A We have put it on this printout, but there are a number of don't knows, if you look at the first page. You find almost 18 percent of the persons in the sample responded, I don't know, to that particular person.

Q Here you have for instance, on the first item of 20,000 and over 38, 4123. Under 20 and 3, now the income is over $20,000.

A That's what we received, responses, yes.

Q You don't know whether or not that's an accurate response, do you?

A No. This question, of income, again there is always this difficulty.

Q And you said something about can't vouch for an accurate background. Do you remember that as part of your answers before?

A Certainly on income. I'm sorry, I think I was specifically referring to the residential area breakdown. I indicated I did not believe that we could use this or I did not believe it was worthwhile to make any further breakdowns on the basis that we only got one percent of the residential area responses in the over 20,000 and in the under 20,000 category.

This is back on page one, all right.

Q Uh hmm.

A So, I didn't use that response. All right, as far as the family income breakdown, again, I really do not know how accurate those figures are. All right. What I did say was that in the final analysis income did not seem to indicate a significant factor in the responses.

Q Did you give any instruction to your pollsters that they were to take the poll only with reference to people who live in Nassau County?

A Yes. But in the processing of the applications we did find some who responded that did not live in Nassau County.

Q. Did you include those in your poll?

A No. We broke them out into what we call an outer area group.

(Continued on next page.)

IR:jm
TlamR10

BY MR. SCHULTZ:

Q Now, we have in the box, which is marked Plaintiff's Exhibit 4 in evidence, a number of those which you call answered questionnaires. Do they number nineteen hundred and seventy-eight or is there --

A That's right. I'd like to correct my answer. You are correct. Those out-of-area people would show up in the total persons; you are correct.

Q OK. So that included in the nineteen hundred and seventy-eight questionnaires --

A Are some three hundred and twenty.

Q Three hundred and twenty?

A Three hundred and twenty-nine.

Q Would that include people from California?

A I don't think -- I don't think I saw anybody from out of state on those. It would -- it could, if I could have another look at those from anybody from California.

MR. SCHULTZ: Your Honor, could I have the last question.

A NO.

(The last question is read back by the reporter.)

THE COURT: Anybody from -- how many out of county, you say?

THE WITNESS: Three hundred and twenty-nine out

of the county.

BY MR. SCHULTZ:

Q Now --

MR. SCHULTZ: I want to mark a document for identification.

THE COURT: What is this? Mark it 4B, 4C. Mark it 4A and 4B. 4B and 4C.

Q Professor Carlino, you -- I show you Exhibit 4B for identification and ask you whether that indicates the locale of the person who signed it?

A It does and it reads, "Sunny Head, California".

Q Just dig in and find one.

A I didn't find one, of course, I wasn't looking through all of those.

Q You did not spend much time on it, as I did?

THE COURT: Mr. Schultz stuck his hand in and pulled one out and says, you didn't spend as much time.

Q Professor Carlino, 4C covers from --

A Manhattan.

THE COURT: May we see what the choices are? Maybe they voted for you.

May have had a few Suffolk County up at arms against bearded policemen.

MR. SCHULTZ: I don't like California. Maybe

I can get some more gold nuggets.

THE COURT: Well, the original from Manhattan, 4C, said whoever it was would require assistance, of Officer A if they approached to desks, on one would see Officer A who would choose Officer B? But driving at an excessive speed, he or she would rather respect B, the one with the hair on the face and head.

4B in both questions would prefer Officer B.

MR. SCHULTZ: I think if your Honor pleases that I would move to strike anything given in response by people living either in Manhattan or in the State of California.

THE COURT: I think it might alter the statistics, but I think that's your job in going through them. In saying thirty-nine or three hundred, you said do not, he wouldn't notice how they voted. If they voted in the same pattern as the others, it doesn't make any difference, does it?

MR. SCHULTZ: The Court may have the burden of going through it.

THE COURT: Never, never.

MR. SCHULTZ: All right. Under the circumstances I have no further questions.

THE COURT: Anything further?

Carlino

MR. HARTMAN: Nothing.

THE COURT: You may -- you want to prolong this, Mr. Hartman?

MR. HARTMAN: No, I don't, your Honor.

THE COURT: Then, why ask a question?

MR. HARTMAN: I have no further questions.

THE COURT: Step down.

(The witness is excused.)

MR. HARTMAN: I do have Dr. Martindale. I told Mr. Schultz I would recall him. I just have two minutes with Dr. Martindale.

D A V I D A. M A R T I N D A L E , called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

THE COURT: You have been previously sworn and still are under oath.

I would like to ask the first question on your return.

Wouldn't it have been better to have two photos of A and B, so that the people asked to answer the questions could see what we're talking about instead of guessing -- or sketches showing the hairstyle?

THE WITNESS: When I initially gave testimony

on the 27th of September, one of the statements that I made about the limitations of our service was that it would have been better if we had been able to use pictures of various people. And basically, the reason for not doing so was a time problem. It would have been very difficult to choose the right people, pose them properly. And it really would have required more than two photographs because you only use two. It would have been very easy to criticize them on some other basis.

You could, for example, have introduced a bias one if the two were better looking people, might respond to the person who is more physically attractive, regardless of the hair factor.

THE COURT: I'm talking about using the same head.

THE WITNESS: Oh, I see.

THE COURT: but just sketching it as the --

THE WITNESS: As the police do in a composite sketch. I hadn't thought of that possibility, but that -- I would assume that would produce a better result. It still, by the way, would not answer Mr. Schultz' objection raised earlier about what happens to the person in between the crewcut and the --

Martindale

essentially, it boils down to an inability to sample all the various possibilities. Some vary as differently as hair style that we couldn't have really dealt with that.

THE COURT: We only hope for perfect fairness, but we can't expect substantial fairness.

All right, Mr. Schultz.

DIRECT EXAMINATION

BY MR. HARTMAN:

Q Just wanted to ask on the question of no difference. You were the one who prepared these questions?

A Correct.

Q Can you explain to me the intent of these questions and what responses you were attempting to elicit?

A Yes. The reason for conducting the poll was to answer testimony offered by Inspector McBride and Inspector Willard. Inspector Willard stated on the 16th of September, Page 217 of his testimony, let's see. I want to find the -- I'm sorry. Page number is incorrect. It's Page 51, Inspector Willard said, "There is no doubt in my mind that he ..." referring to an officer with long hair,"...is going to turn off ninety-six per cent of the people in Nassau County."

So, he was presumably offering expert testimony

based on his knowledge as a community relations person for the county that ninety-six per cent of the people in Nassau County would be turned off by a police officer with long hair.

In addition, Inspector McBride said, on Page 18 of his testimony the same day, that "Citizens are upset about the appearance of the Suffolk County police since they have abolished their hair length requirements and other requirements in that area". And, on Page 19, the Court indicating that it was interpreting Inspector McBride's testimony as relating to loss of respect from the community.

That essentially was the issue involved. Our only intent in making the poll was to indicate that there wasn't evidence of loss of respect and that there wasn't anything close to ninety-six per cent of the people expressing an attitude of being turned off by someone with long hair. We weren't attempting to imply or to prove anything about long hair versus short hair. We simply were suggesting by our data that contrary to what was stated by Inspector McBride, contrary to what was stated by Inspector Willard, there isn't evidence to suggest the vast majority of the people are going to be turned off by someone with long hair.

Q The questions as were posed of Officer A, Officer B, with no difference, can you explain to me the reaction to the question, no difference. What reaction were

you attempting to elicit?

A Well, essentially --

Q As compared to undecided.

A Right. My feeling is that while it's certainly possible,as Professor Carlino stated, that some of the people saying no difference are in fact saying no difference only because they haven't made up their mind. My assumption would be that most of the people saying no difference, are saying that because that's exactly how they feel. That they either have thought about it previously or are thinking about it at the time they are taking the poll and feel it wouldn't make any difference to them.

I don't think it's quite the same as saying undecided.

Q And --

THE COURT: Do you believe that? Saying no difference in the context of this question is a choice?

THE WITNESS: Yes, quite definitely.

THE COURT: Well, undecided obviously is not.

THE WITNESS: Right.

BY MR. HARTMAN:

Q Some question about the -- if there were sixty-five per cent no difference and let's say it was seventeen per cent A, seventeen per cent B, this thirty-five per cent

might relate to thirty-two and a half per cent equal to what the original choices were. Would this be the type of question or type of choice you were asking for? Same type of reaction that you might get from an undecided situation?

A I'm certain I understand the question.

Q There is a theory that if a choice is -- if there is a blank or undecided, let's say --

A The apportionment thing. No, I don't think that the philosophy of apportioning undecided, would apply here, because as we have said, it's not as though they're saying they're undecided. They're saying it makes no difference to them.

THE COURT: Actually, it's a distribution of the undecided or the no difference vote.

THE WITNESS: Right.

THE COURT: Mr. Hartman, if you're taking more time, Mr. Schultz, I'm going over until 2:15. Mr. Schultz will probably take some time. Anyway, as I understand, I don't want to cut either of you off. I'm saying that we can take our lunch --

MR. SCHULTZ: Let's take our lunch hour now.

THE COURT: You will?

MR. SCHULTZ: Yes.

THE COURT: Come back at 2:15.

(A luncheon recess was taken.)

Rubenstein
Tipsrll
follows

ir;pc
tll

THE CLERK: Please be seated.

Dr. Martindale, will you please come up?

MR. Schultz?

CROSS EXAMINATION

BY MR. SCHULTZ:

Q Dr. Martindale, you were here during the testimony of Professor Carlino, were you?

A Yes, sir, I was, yes.

Q Are you familiar with the computer programming that Professor Carlino was discussing?

A No, I'm not. Computer programs really isn't my field. The reason the two of us worked together so that he would be able to handle statistical analysis and -- and my main function was to devise the questionaire and to indicate what the instructions to the poll taker should be. What the questions should be taken in terms of avoiding bias and so forth.

But the analysis of the data was really up to him. I'm not familiar with the computer programming.

Q Were you, in any way, conversant with the areas of survey or poll which took place?

A The geographic areas?

Q Yes.

A No, sir.

Q Did you hear him say something about that they received a good number of their answers at MacDonald's?

A Yes.

Q Do you know where that MacDonald's is located?

A No. But my feeling is that that's not relevant because they asked on the questionaire the area where the person resides.

Q I'm not asking you that. I'm asking you, do you know where the MacDonald's is located?

A No, I don't.

Q You feel that it's pertinent enough to ask anyone on any street where they live and --

A I think that if you take a poll and a location that draws people from divergent areas, such as MacDonald's, in a shopping center or something of that sort, and you ask the people in which area they reside, and you then use the information that they give you with regard to where they live, there is nothing wrong with that. It doesn't matter at the time you polled them, polled them in a location other than the location in which they lived.

Q When was the last time you took a poll?

A Last time I took a poll was approximately a

year ago.

Q Where?

A At Stonybrook University and the area surrounding Stonybrook.

Q For what purpose?

A For research purpose.

Q What was the research subject?

A Research subject was -- I was -- in which a poll taker can create a bias inadvertently, by simply, in some way, letting the poll respondent know what his interests are in what is being polled.

Q How do you determine -- withdrawn.

How do you indicate to a person being solicited for the purposes of a poll, what your interest is, so far as the subject matter is concerned?

A Particular piece of research that I did.

Q Please answer my question.

A How do you convey the information?

Q Yes.

A There is a variety of ways.

You can convey the information in an offhand comment. You can convey the information by displaying it. Further, by taking a political poll, if you're wearing a label, pin, wearing a particular candidate that conveys your

position.

Q Can you also convey your position by people, by saying, to them, what you're interested is in with regard to the hair to be worn or not to be worn by a police officer?

A Yes, you certainly could.

Q And were you present while the poll was being taken?

A No.

Q By these 8 people?

A No, I wasn't.

Q And would you be able to say with any definition, certainty, whether any bias may or may not have been displayed, or interest may or may not have been displayed by those 8 people?

A I can say with a fair degree of certainty, it's very unlikely a bias was displayed, because they didn't know the purpose of the poll.

Q Can you display the purpose of the poll by looking at the document?

A It's really hard to say. I assume it would be possible that a certain number of respondents, if they thought long enough about the poll and what its objective was, might be able to determine the objective of the poll.

Q You're talking about the one taking the poll?

A The one taking the poll, the poll respondent.

Q If he thought hard enough and determined the objective, it's possible for him to display to the person answering the questions some sort of interest, which would create bias?

A I'm not sure, I follow you. It would be possible if he determined the purpose of the poll. To give an answer that he felt the poll taker was interested in hearing or interested in seeing, since we're talking about a thing where a person simply checks off an answer --

Q Now, in connection with the questions to determine whether or not there was an interest with a crew-cut, and with a police officer with no official hair, were you present when those documents, which is referred to as appendix to and which is plaintiff's exhibit --

THE CLERK: 4A.

Q -- 4A in evidence, were handed out to those 8 people?

A No, I wasn't.

THE COURT: 4A is not the instruction sheet?

MR. SHULTZ: No.

THE CLERK: Instruction sheet is 3, your Honor.

THE CLERK: You said appendix two, which is the questionaire.

MR. SCHULTZ: That's the questionaire, your Honor?

THE COURT: Oh, yes.

MR. SCHULTZ: That's exhibit 3.

THE CLERK: No. That's 2, but I thought you were referring, rather, to the instructions that were given, which is 3, appendix 3, too. 2 is the printout.

THE COURT: Questionaire, yes.

Q Did you say you were not present?

A I was not present while the instructions were given to the --

THE COURT: Excuse me. I may have confused you. Did you intend to ask about the instruction sheet or did you intend to ask about the questionaire?

MR. SCHULTZ: Questionaire. All right. That's exhibit 2.

THE CLERK: 3.

THE COURT: I'm sorry, appendix 2, exhibit 3. They're all exhibit 3.

Q You say, you were not?

A I was not present while the questionaires were given to all the poll respondents, no.

Q You testified a moment ago, or Dr. Martindale,

there couldn't have been any creation of bias, since these 8 pollsters did not know the purpose of the poll, is that correct?

A That's my understanding, yes.

Q We're talking about that's your understanding, this is not from your own personal knowledge, is that correct, sir?

A That's correct.

Q This is what somebody else told you?

A Yes.

MR. SCHULTZ: If your Honor please, I move to strike out that testimony because in that sense, it is hearsay.

THE COURT: Motion denied.

MR. SCHULTZ: Denied?

THE COURT: Yes.

See, you asked the question, "Do you know?" Knowledge is again, from any number of sources. You get it from reading, history, it's all hearsay.

Now, when you ask him what his personal knowledge, he said, No. He didn't see the instructions being given out.

MR. SCHULTZ: Or hear them.

THE CLERK: Or hear them.

MR. SCHULTZ: Because he's making a point of the fact there could not have been any indication versus the people taking the poll. Didn't know the purpose of taking the poll. He didn't even know that they were taking, the purpose of the poll.

THE COURT: I take it that he was not present. He doesn't know the operation of minds, any number of possibilities.

MR. HARTMAN: Not talking about operation of minds, talking about conversations.

THE COURT: One of the solicitors could have been in the courtroom. I don't know all about the case.

MR. SCHULTZ: No. What I'm talking about is when Professor Carlino called these 8 people and said, here are 400 or 300 or 200 papers each. You're going to get so much for this type of work. This is what I want you to do.

THE COURT: Yes.

MR. SCHULTZ: No, Dr. Martindale is testifying that they couldn't have known the purpose when he was not present during the instructions that were given by Dr. Carlino to those 8 pollsters.

THE COURT: I don't pay any attention to that.

MR. SCHULTZ: Okay.

THE COURT: Now, that he couldn't have known the instructions, so, when you ask him questions concerning what the solicitors know, then he is not telling you what he knows from his personal observations. He's telling you what he generally knows, what he believes. I assume, based on that, you want to ask him questions.

Assuming that they did know that's what I thought the question was going to be. This is an expert called to express opinions.

MR. SCHULTZ: I wasn't asking him opinion evidence. I was asking him of his own knowledge and usually, when a person gives evidence which is not within his knowledge and is not expert testimony, it's usually stricken.

THE COURT: That's usually so. But like all rules, you must know the purpose of the evidence and whether it's on the issue is involved in the case. If it's not, hearsay may very well be admissible. We use hearsay in abundance here. Every time an expert gets on the stand, all we hear about, do you have an opinion and suppose.

Hypothetically, this happens and that happens,

it isn't even in the record. Yet, you asked the questions as to testing his expertise and to challenging his opinions. So, it's perfectly all right.

THE WITNESS: Mr. Schultz, if I may amplify on that for a moment?

MR. SCHULTZ: No.

Q Dr. Martindale, other than the Stonybrook poll which you say you took --

A Yes.

Q -- were there any other polls in which you participated?

A Only undergraduate level, yes.

(continued next page.)

T1PM
R12
IR:MM

Q When did you receive your undergraduate degree?

A In 1962.

Q When you talk about undergraduate level, you're talking about what you did up to but not past 1962?

A Correct.

Q On page 174 of your direct testimony Dr. Martindale, when you were analyzing the testimony of Inspector McBride, in connection with the statement ofthe youth.

A Right.

Q Talked about a police officer with long hair. Are you doubting for one moment that the youth said what Inspector McBride said he said?

A No, I'm not.

Q Now, you said in your testimony, "I think if I were a youth pulled over for speeding for one reason or another, lost my head and ending up cursing at a cop then, that police officer called me aside and said, "You know son, why did you behave that way". I would feel compelled to manufacture an excuse and perhaps a handy excuse. Well, maybe he had sideburns and had this that, I couldn't take him seriously."

You remember giving that answer?

A Yes, I do.

Q Now, you gave that answer in a sort of watering down or explanation of Inspector McBride's testimony with

respect to that youth?

A Yes.

Q Now, you read Inspector McBride's testimony in connection with that incident?

A Yes, I did.

Q Was there anything in the testimony of Inspector McBride, which indicated that Inspector McBride called him aside and talked to him at the scene of the giving of the ticket?

A No.

Q Was there anything where, Inspector McBride's testimony, which indicated that he had said, "You know, son, why did you behave that way"?

A Yes.

Q Was that at the scene?

A Not at the scene, subsequently.

Q Was there anything in Inspector McBride's testimony, which indicated that the boy who had received his ticket received any favorable treatment in the disposition of that traffic ticket as a result of what he said to Inspector McBride?

A No.

Q So, that you have an instance as far as Inspector McBride and the shoes are concerned, of the boy expressing

his opinion of his reaction to this long-haired police officer, giving him a ticket and it serves no purpose nor did the testimony indicate what the boy looked for or any purpose in giving that explanation, am I right?

A I agree.

Q In what way do you disagree?

A I agree. It served no purpose but I disagree in your implying the boy knew it would serve no purpose.

May I assume then, is creating the opposite. That he assumed it would serve a purpose. I would express the feeling he was rather shocked when it didn't serve any purpose.

Q A police officer, once given out a ticket, tears it up.

A I don't mean that he was also charged with -- I don't know the technical term, having charged with having harrassed the police officer, something of that sort.

My assumption is that he was attempting to explain why he behaved that way to the police officer. And I further assume that he felt that if his explanation was satisfactory that particular charge would be dropped.

Q Let me ask you this, professor, doctor, this took place how long after the charge had been levied against that boy?

A It's not clear from Inspector McBride's testimony what the time period was.

Q It wasn't on the scene, was it?

A No.

Q Could it be possible in your analysis of that incident that the boy came inwhether it was that afternoon or the next day or at any time after he had obtained his ticket and the other charge had been made against him by the long-haired police officer that the boy came in, in order to explain to Inspector McBride, let me tell you why I went off my handle; is that possible?

A That's possible, yes.

Q On page 184 of your testimony and I mention the page so that Mr. Hartman can follow it and his Honor, if he chooses to do so; enter into a discussion of three police officers who are your patients in your private practice, isn't that correct?

A Correct.

Q Now, bear in mind doctor, whether you would be free to give me their names or not, is immaterial. I'm not asking for their names. Would you bear that in mind?

A Yes.

Q I'm not asking for any clue as to their respective identities. But I think you did volunteer that the

three of them were members of the Nassau County POlice Department, is that correct?

A No. It's not correct and I didn't mean to create that implication at all. All members of the Suffolk County Police Department.

Q Maybe I assumed the wrong impression. All said that they were police officers?

A I believe that's all I said.

Q Since we're talking about Nassau County Police Department, I assumed you were talking about three of our police officers. But, they're Suffolk County Police Officers?

A Correct.

Q And you said that "all three at one time or another", I'm talking about your three patients, who are Suffolk County POlice Officers, "complained about one particular hazard of being a police officer. Which was that because of restrictions dealing with hair length and so on they felt they stood apart from their former friends. People that they went to high school with or whatever and that they were forced because of the fact that they felt so different to associate only with other police officers even while they were off duty."

Would you please stand up, Lieutenant O'Connor. Is there anyting different about Lieutenant O'Connor from

any other person who wears his hair in a similar manner or is this just Police Department hair?

A I don't think it's just Police Department hair but I think that it's different, certainly from my hair.

Q In what way?

THE COURT: It's shorter.

A It's shorter. Just in general terms, much more conservative type of hairstyle than mine.

Q Is Judge Mishler's different than yours?

A Yes, it is.

Q Anything different about my hair than yours?

A Yes.

Q In what way?

A I have more.

Q What about the back?

A Mine is longer.

Q What about the face?

A I have a beard, you don't.

Q What about the sideburns?

A Well, sideburns are part of the beard, I guess.

Q Are there police officers, with -- to your knowledge, with the same scarcity that I have?

A I assume there are. Mr. Greenwald has less hair than you have.

MR. SCHULTZ: I think the record ought to indicate if he's not here that Mr. Greenwald has no hair.

THE COURT: Who's Mr. Greenwald?

MR. SCHULTZ: Daniel Greenwald, who was former president of the Police Benevolent Association.

THE COURT: He was a plaintiff in one of the actions?

THE WITNESS: Yes.

MR. SCHULTZ: Yes, sir.

He brought that action.

THE COURT: Where is the plaintiff in this case? He keeps hiding.

THE COURT: Why do you hide?

THE WITNESS: He thinks his hair looks funny.

BY MR. SCHULTZ:

Q Dr. Martindale, can you tell me whether each of those three patients of yours, have long hair or short hair?

A Right now, none ofthe three are still patients.

Q The last time you saw each of them?

A The last time I saw each of them, all three were still wearing hair conservative in style and in a manner which I assume would conform to the previously existing Suffolk County regulations.

Q And you say that they told you to, because of that hairstyle that they were restricted going out only with police officers?

A I don't believe they said that was the only factor which caused them to make friends only among other police officers.

Q What other factors were there?

A They didn't mention them.

Q Is it to your knowledge that police officers have different hours than almost all other occupations?

A Yes, I'm aware of that.

Q And you, in your professional capacity, as a professor, at Hofstra University --

A Nassau.

Q Nassau Community College, have certain specifi hours that are rather uniform, aren't they?

A Correct.

Q You know that the police Department has three tours of duty?

A Yes, I am aware of that.

Q 8:00 to 4:00 which means 8:00 a.m. to 4:00 p.m 4:00 p.m. to 12:00 midnight, and 12:00 midnight to 8:00 a.m. isthat correct?

A That's correct.

Q Well, I thought you knew, but I wanted to get it on the record.

And you know there are times when a police officer who might want to go out with other friends and his wife would want them to go out with other friends, and if the occasion might be a Saturday night for a show or a restaurant or for other invitation, might be assigned to be onduty on that particular Saturday night.

Is that possible?

A Certainly is.

Q And which you say then, that that would make it rather difficult for the police officer to continue to socialize with his friends who have uniform hours?

A No, I couldn't.

Q Would you not?

A No.

Q Wouldn't you say that that was the sort of case in many instances to gravitate towards men of his own professional calling?

A Possibly. What I was doing, by the way, was expressing the view of the patients, not my own view.

Q What is your own view? I s that that people of similar callings usually gravitate towards each other?

A No.

Q They do not?

I'm not saying they don't, but I don't think that that's the cause of it. Because all three patients and I mention again, as I mentioned previously, three is hardly a large sample expressing different stories over the fact they didn't feel comfortable with their former friends.

They did not in any way indicate that they now associate with only fellow police officers because they prefer it.

But because they feel in some way certain pressures make it necessary that fellow police officers become their friends and that they abandon their friendships with previous friends.

Q Would the pressure be the hair?

A I'm only saying that was their feeling.

Q Not yourself?

A I don't honestly know. I don't honestly know because I'm not in that position.

But three people have told me they feel, they feel they stand out among their former friends.

Q Not in what position.

A I'm not in the position that feeling that my hair length is different from the people that I would choose to associate with and feeling that perhaps, I ought to change

my associations because of that difference.

Q The people with short hair associate with you?

A Sometimes.

Q Do you make them feel uncomfortable?

A I don't think so.

Q Do you think they feel uncomfortable with --

A No, we're talking --

Q Yes or no.

A No.

Q Did you have any thorough discussion in the form of an analysis or otherwise with these three patients in connection with that problem of feeling like they stand out among their friends who are not police officers?

A No, I didn't.

(continued on next page.)

12

IR:MM
T1PM
R13

Q What was the purpose of their visiting you?

A All three cases were different reasons. There was no common element in the three cases.

Q Was this a psycho-analysis or psychology treatment, that each were receiving?

A Wasn't psycho-analysis. All three cases there were marital problems involved.

Q Wives objected to their working around the clock?

A No.

Q Are you a marriage counsellor?

A I do marital counselling as part of my practice, yes.

Q Was this marriage counselling that you were doing in those three instances?

A Not in the standard sense. In ordinary marriage counselling, you see both parties. In this particular case, the husbands in each case was the person I would see, not the couple.

Q And was this explanation being given to you by each of those three police officers, each of whom had marital problems as a sort of a method of explaining a by-part of the problem?

A I don't understand it.

Martindale-cross

Q Did you ever see the wives in those particular cases?

A Two out of three cases, yes.

Q Did you discuss with them the friendships that she had had?

A Yes.

Q And did, was it indicated to you by the wives that because of the length of the hair of the respective husbands that they had lost friends?

A No.

Q You know, there was also some testimony which you gave in connection with an explanation of Inspector Mc Bride's testimony concerning conversations he had with people about what's happening with the Suffolk County police officers. And you explained somebody had come to your house, they would have given a different explanation, is that correct? Remember saying that?

A Essentially, yes.

Q And again, I ask you, are you in any way doubting that those people spoke to Inspector McBride in the manner in which he described and testified?

A Not at all.

Q You say that if anybody had come to your house they would have said to you, something about a stupid regulation

and I objected to the word "stupid" regulation.

A Word is regulation.

Q Word is "rediculous" and I objected at that time.

A Yes. I believe your objection was overruled.

Q That's right.

THE COURT: I don't remember.

Q Because I -- all I can do is make the objections. Did anybody come to your house and make such a statement to you?

THE COURT: That ruling, anyway, did not mean I approved the characterization. I think the witness was just giving a hypothetical. It really didn't matter. What he tried to say is that the people that would visit his home in all probability, would oppose the regulation or even ridicule it as a restraint.

Q Without indicating that anybody had ever said something --

A As a matter of somebody saying so, I wouldn't have a greater emphasis if nobody had said so.

THE COURT: We're talking about the general population; we're talking about the duty of the Police Department and how it be effected not what one individual says about it.

Q On page 1, Dr. Martindale, you said something about "A police officer hasn't been able to wear his hair the length that he might to like to when told that the restriction is lifted, may go wild for a while but that the evidence suggests that he will slowly settle back to something that approximates normalcy."

Do you remember saying that?

A Yes, I said that. Yes, I do.

Q What do you mean by "normalcy?"

A It would be very difficult for me to define "normalcy." I could very subsequently state that I feel that the length of my hair is normal.

I grant that's not an objective observation, but I don't think it stands out as being grassy or wild in its length.

Q Dr. Martindale, all I want from you is for you to explore what you said on the witness stand.

A Sixteen?

Q On September 27th, 1974. I think it was September 27th, 1974.

A Yes, I'm sorry.

MR. HARTMAN: Your Honor, I think that's being taken out of context. There was, I think there was a response by Dr. Martindale to something --

16

THE COURT: If it's being taken out of context don't worry about it. I happen to recall that portion of the testimony.

BY MR. SCHULTZ:

Q Now, you heard Mr. Hartman say what I was just inquiring about was taken out of context. Let me give you the question that was put to you in connection with that type of answer.

"Question: The fact that once the aired regulation was reinstated from the rules and regulations everyone went out and started growing their hair much longer."

Now, it's in the form of a question. While it may not sound like a question --

A Right.

MR. HARTMAN: Your Honor, I object. It was not the question. The question was right before that. That was a continuation of the question.

THE COURT: Go ahead, continue.

Q Do you understand or did you understand what you said when you "when a police officer who hasn't been able to wear his hair the length that he might like to when told the restriction is lifted, might go wild for a while".

A Did I understand what I meant?

Q Yes. Tell us what you meant when you said that.

A I guess I can most likely make reference to an off-handed comment one officer said: when the regulation is lifted, he's going out and growing a pony-tail.

Q That's going wild?

A I would think by current standards, yes.

Q Then, you went on and said "But I think the evidence suggest that we slowly settle back to something that approximates normalcy."

Would you say that would indicate a return to shorter hair?

A Shorter than a pony-tail, yes.

Q Where was there anything about a pony-tail?

A Well, in using my example.

Q Did you say anything about a pony-tail in your answer?

A No, I didn't.

Q Now, you have given an opinion with regard to the attitude go the general public like in difference to whether the hair is short or long. Isn't that basically the substance ofyour professional opinion?

A Yes. But not everyone, but the majority of people are relatively indifferent, the hair length of a police officer.

Martindale-cross

Q Is this a personal opinion or has there been a scientific study conducted by you?

A I would say it's a study was conducted for Mr. Hartman by myself and Professor Carlino and others.

Q When?

A When was this conducted?

The exact date of the survey on the top sheet, I'm not certain.

Q Are you talking about the survey which is the subject of Exhibit 4? Which is contained in the box?

A Yes, I am.

Q Are you aware of the fact that that survey was conducted after you gave your testimony?

A Yes, I was. I made a small version of the same study. It was prior to my giving testimony.

Q You may recall of the small version of the same type of study, was in areas not patrolled by the North Nassau County Police Department, is that correct?

A That's correct.

Q Okay. And it included areas where Police Department, exists not under the control of the Nassau County Police Commissioner?

A Yes.

Q And that whatever crowding standards there are

in those Police Departments, are not under the control of the Nassau County Police Commissioner, you're aware of that?

A Yes, I am.

Q Was it based on that smaller study that you predicated your professional opinion?

A My opinion was predicated on the results of that small study. Plus, interaction to the students over a period of eight years. We take it from when I started teaching to the present. Plus, under -- with patients.

Q Interaction with students. Youre talking about now, about students who have long --

A Not all of them have long, majority of them have long hair, yes.

Q Students, these days come to school in dungarees, don't they?

A Many of them do.

Q And they wear sneakers?

A Sometimes.

Q They don't wear a tie?

A I hardly ever see one with a tie.

Q Would you say that that's the way a Nassau County Police Officer ought to dress?

A No, I would not.

Q Now, the patients whom you see, they see you

20

in a professional capacity?

A Yes.

Q They see you for the purpose of some mental disturbances?

A I wouldn't want to use this term.

Q How do you use it? What term do you use?

A I'm afraid I don't use the term, I'm not being facetious.

Q They don't come to discuss the weather with you or baseball?

A They come to discuss emotional or personal problems. But my own feeling is majority of the patients I see are healthy as anybody else who's not in --

Q They're wasting time, coming --

A Not wasting time coming. But I don't think they are crazy people or abnormal people whose opinion are in any dramatic way different from the opinions of society at large.

Q Are you telling me that you discussed with those patients the short hair of police officers?

A Not ordinarily, but that -- about testimony coming up in the course of therapy and people expressed what they felt about what created in them, negative versus positive. First his impressions, things of that sort.

21

MR. SCHULTZ: One minute, please.

I think I have nothing else.

THE COURT: Anything further?

You may step down, thank you.

(The witness excused.)

THE COURT: Do you have a witness, Mr. Schultz?

MR. SCHULTZ: Your Honor, I wanted to call Professor Carlino for a few moments.

end 13

(Continued on next page.)

THE COURT: How much longer do you have?

MR. SCHULTZ: About another hour, I think.

THE COURT: Well, we have been very fortunate that Jury hasn't asked me to read one word of testimony. Normally, I would be in that courtroom. I can just tell you not to press your luck because you'll be coming back again. All right.

RE-CROSS-EXAMINATION

BY MR. SCHULTZ:

(Professor Carlino is recalled to the witness stand.)

Q Professor Carlino, you remember when you testified in this proceeding, I believe it was on September 27, 1974, and you gave evidence with regard to the previous sampling that had been taken.

Do you remember that phase of the testimony?

A Yes.

Q And do you remember my questioning you at that time with regard to Lynbrook and Hempstead and Rockville Centre?

A Yes.

Q And do you remember my calling to your attention those particular villages had their own Police Departments?

A That's correct.

Q Now, in connection with the survey which is

plaintiff's Exhibit 2 in evidence: namely the big blue book and the 19 hundred some odd individual documents, which is plaintiff's Exhibit 4 in evidence, you have at the bottom, of each of those papers, the name of a town; namely, like the one I look at says "Douglaston." You're aware of that, aren't you?

A Am I aware of Douglaston?

Q Aware that it says Douglaston on there.

A I'll take your word for it.

Q Okay.

Now, is that marked don't put it back.

MR. SCHULTZ: We can mark it 4D, please.

THE COURT CLERK: So marked for identification.

THE COURT: May I see it, Mr. Martin?

THE COURT CLERK: Yes, sir.

THE COURT: All right.

BY MR. SCHULTZ:

Q We have 1978 of those documents, don't we?

A That's correct.

Q At the bottom of each one of them, there is the name of a home community, is that correct?

A Yes, that's correct.

Q Now, were you able to program all of the other information with regard to Officer A, Officer B, no difference?

In connection with the two questions, were you able to program the sex, the age and the income, were you not?

A Yes.

Q Would it have been possible in completing the job, to program the number of people that came from Queens County and the number of people who came from Hempstead and the number of people that came from Oceanside or from Lynnbrook or from wherever else these towns appeared at the bottom of those particular documents.

A Possible but complex, yes.

Q And can you take for instance, ten papers and call it Oceanside and give it a number or letter?

A Yes, we can.

Q Can you take twenty papers call it Hemptsead and give it a number or a letter?

A Yes.

Q Same thing with all of the other communities that are listed on those 1978 documents?

A Yes.

Q Can you feed those numbers and letters into the machine and come out with a number of people that came from Hempstead, number of people or percentages of people that came from Hempstead, Valley Stream, Greatneck, Sands

Point, what have you?

A Yes, we can do that.

Q That wasn't done, was it?

A No.

Q You never showed us a map in that census book which I believe is --

THE CLERK: Plaintiff's Exhibit 6.

Q Plaintiff's Exhibit 6 in evidence.

THE CLERK: For identification.

MR. SCHULTZ: Map, I think --

THE CLERK: 6A is the map.

Q 6A, which is plaintiff's exhibit S6A, in evidence and it has different colors in different spots in Nassau County, is that correct?

A Yes.

Q The color red, if I think you remember, if you want to look at the exhibit again, you may do so.

That the color red is a high income rate for Nassau, Suffolk County.

A Medium income over $20,000 as of the 1970 census.

Q What does the yellow color mean?

A I don't recall. I remember red specifically because that was the highest one.

Q Okay. Were you trying to impress upon the Court

by showing the map that you wanted the census or poll taken in those different areas so that you could get an idea of the income of those people and see how they feel about long hair and short hair.

A No. What I was doing, I was explaining the category, residential area as it appears on this report. I also explained why we had attempted to do this and I explained also the reason why.

Ultimately, we disregard the particular category because we did not get what we felt was a --

Q In other words the map which is in evidence to show income, had no part in the program which was followed out by your eight pollsters?

A No, the map was not to show income. The map was to categorize a particular person within a particular type of community. We do have another question which was to indicate income.

The map was to indicate the kind of -- the general value if you will, of a particular area. If it is valid, I'm not saying that it is, but if it is at all valid I'd like to categorize a community or --

Q Where do you live?

A On the basis of medium -- I happen to live in Long Beach.

Q Is Long Beach colored red?

A No, it is not.

Q Does that mean that people in Long Beach, there are no people in Long Beach that would have the type of people who have the income that live in Sands Point?

A Not at all.

Q Simple thing would be to try in Hicksville or any other part of Nassau County?

A Correct.

Q Were you taking that map to see whether or not a person who wrote down Oceanside, 20,000 or over, was telling the truth because if Oceanside didn't show up red that person couldn't be making 20,000?

A Not at all. We were asking what we felt were two completely independent questions. One was to determine if income itself was a factor in the way the person would respond and another was whether or not the particular type of community was a factor in how the person would respond.

Not how much that person was making. You could be earning over $20,000 in a low-income area and perhaps that was only a theory that we wanted to test. Perhaps that would be the redeeming factor as opposed to your income.

Q Was it tested?

A No, it was not tested as I indicated.

Q Let me ask you this: you mentioned something about the poll being taken in front of McDonald's.

Is that what you said?

A No, I said that I said that some of the solicitors, found that in place like McDonald's Hamburger Stands, where you find a lot of people who are in a relaxed atmosphere, they found large cross-sections of persons and persons more cooperative in answering the survey.

Undoubtedly, some of the pollsters probably visited McDonald's Stands. But that does not mean that the entire survey was taken in front of McDonald's.

Q Where is the McDonald's youre talking about?

A I do not know. This was one -- I believe it was McDonald's somewhere in Oceanside or perhaps it was near Long Beach. I don't know. It was a particular solicitor who told me about this.

All right. So apparently that solicitor probably found cooperation at McDonald's but this is not where we sent people.

Q Professor, would you say there is a only particular part of the population as far as income is concerned that goes to McDonald's?

A I really do not know. All I can tell you is that from personal experience but nothing this data would

give me, any facts.

Q Where else was this poll taken, do you know?

A Well, the areas specifically, the areas are listed that we had sent people to. Initially, the areas listed, well I don't have them with me now but they're listed on eight sheets that we have or ten sheets, I believe.

For each of the solicitors that each of the solicitors submitted. This indicated the general area which they visited. They were at liberty to seek out places such as shopping centers, places where there were large numbers of persons and where they could find people to answer this.

Q You didn't suggest they go from house to house?

A No. We did not want them to go from house to house. We felt that would have taken too long.

MR. SCHULTZ: All right, no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. HARTMAN:

Q I show you these slips which purport to be declarations. Purporting to have signatures and initials on each sheet. Can you please explain to the Court what those documents are?

A These were part of the -- each solicitor was required when they brought their documents back to submit one

of those sheets which indicated the date and the approximate time they arrived at a specific area, designated area.

Q I know that one signed two sheets. Does that mean he went out twice?

A That's exactly what that means.

Q Solicitor is required to sign the sheet when he or she, which was a declaration that they personally had solicited these questions from these people and initialled it so we can check the names from before.

Q The initials that they signed at the bottom of the sheet that was checked against the -- each of those filled out questionnaires upon their return to the computer programer?

A Yes. To the best of my knowledge, everyone ofthem was.

Q Is this like the master sheet so to speak to which they were compared?

A That's right. That's exactly how they were used.

MR. HARTMAN: Your Honor, I would ask they'd be admitted to evidence.

THE COURT: Any objection? I don't know what they are. You asked about the initialling, how it was done. How you know the solicitor initialled and the method was just described by the --

MR. SCHULTZ: No objection.

THE CLERK: Nine sheets marked plaintiff's Exhibit 7 in evidence.

THE COURT: Nothing further?

MR. HARTMAN: I have nothing.

THE COURT: Mr. Schultz, have anything further of this witness? You may step down.

(The witness was excused.)

THE COURT: Will you call your witness, Mr. Schultz.

A L L A N M. L I P P M A N, having been called as a witness, being first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Allan Lippman, do you have any educational degrees?

A I have a Bachelor of Arts from Hofstra University in sociology and history and I have a Master of Arts from New York University in human relations and I have completed 72 credits of sociology. I am at present, a candidate for PhD at New York University in educational sociology.

Q Where are you employed?

A CW Post College, Long Island University.

Q What do you teach?

A At CW Post, for the last two years I have been teaching in the Department of Criminal Justice and previous to that from 1957, I taught in the Department of Sociology and I also teach at Queens College and the School of General Studies and the Department of Sociology.

Q Do you belong to any particular professional societies?

A I belong to the American Sociological Association; the Eastern Sociological Institute; the Society for Social problems: Society for the Society Socially of Religion Society for the Educational Sociology.

Q Are you in any way familiar with the taking of polls?

A I have been -- I am familiar with the taking ofpolls but I prefer to call my work scientific sociology. I have been engaged in doing survey research with quantitative data and participate on observation with qualitative data as well as contents analysis since 1962.

Q When you say you have been doing it, have you been doing it individually or --

A As a teacher. As a teacher I have been doing it. I have been employed out by various organizations. I have worked for Columbia University for three and a half years, Bureau

of Applied Social Research. I worked for Mobilization for Youth and I worked for Operation Bowery, maybe with the Western Operation Bowery, under the Auspices of the Welfare Department in cooperation with Columbia University.

I was with the Social Welfare Research Council which is a private armed, funded through the Federal Government in cooperationwith Welfare Department, New York City.

I was with the Research Foundation of the City, University and I was research directror, Greenwich House Counselling Center for four years.

I have been on the research council of the New York Association of Voluntary Clients for the Prevention of Addiction to Marketing Substances Inc.

I have worked with the Police Department, New Y ork City, and right now we are doing a study of evaluating the new curriculum which was put into the Police Cadet Academy this last summer, and I worked with the Drug Counsellor in Nassau and other kinds of things such as that.

I think that's enough.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. SCHULTZ (CONTINUED):

Q Now, with all of the work that you have been talking about, what part if any has been played in the taking of actual polls?

A May I use the term survey because a social scientist does not participate in polls. There is nothing scientific about a poll. There is nothing valid, nothing objective and there is nothing reliable, concerning a poll.

A social scientist concerns with the social service and I have been concerned only in the academic, non-profit area of scientific research, another word for it.

THE COURT: Isn't sampling of a product accepted method in trade for introducing a new product in the method?

THE WITNESS: Absolutely, sir.

THE COURT: Isn't that same as poll taking?

THE WITNESS: No, sir. Absolutely not. When you go out to a shopping center and you ask people what tooth paste they use or what shaving cream they use, who they're voting for, you have no idea of the relationship of that population sample, population to the pocket population that you're interested in.

For instance, in this particular survey --

THE COURT: That's an old product. How about a new product where they put out the XYZ putty in a locality and ask the people what they think of it? Whether it's good or bad or buy it or wouldn't or the packaging of an article, whether they like the packaging.

THE WITNESS: The validity, depending on how close your sample represents your target population, if I was interested in packaging of a female, something or other, whatever the females use and I went and asked their husbands how they looked the unit I might get a very display of answers. Not tell me whether my product's going to sell or not, but if I went to females of the right age, of the right disposition to use this kind of product and I stratified my sampling by this particular population, and then I gave each particular female within the population an equal opportunity to get into the sample: then, I would have some idea that my sample is reliable to population.

Any other way I have no idea it is. It may or may not be.

Q Mr. Lippman, you have looked at the documents which is Plaintiff's Exhibit 2 in evidence and which has been described as a poll or survey, have you not?

That's the big blue book.

A Yes, I have.

Q Can you tell me, did you study it?

A I studied it. I received it last Sunday in between teachings and other duties and I studied it, but it didn't take long to study it.

Q Tell me what is your impression of that particular document.

A Unprofessional, amatuerish, amateurish piece of work.

Q Why?

A Have you got a couple of hours? May I get the quesionnaire?

THE COURT: Who are you asking, Mr. Schultz?

THE WITNESS: I think Mr. Schultz --

THE COURT: Are you asking him whether he has a couple of hours?

THE WITNESS: No, sir, it was just a remark.

Without the question, well, because I'd like to be specific.

Number one, if we're going to talk about the reliability of the sample: if you look in this particular document, the instruction to the interviewer, they are to go out to some area unspecified and chose

a number of let me read the exact words -- "Make every effort to solicit as broad a spectrum of persons as possible."

Now, I am a social scientist not my seventeen year old solicitor that sounds something like a lawyer or something. But it is, I who control, who comes into my sample, who does not come into any sample.

I don't leave it to some child any more than you would leave it to your law clerk to argue an argument. Therefore, I could not have any confidence in what they're doing.

Number two, it was reported back there is a little bit later, it took five hours to interview approximately 200 people. I get 250 people by 1900, by eight. In five hours that gives approximately a minute and a quarter, minute and a half to do an interview if there is no time during theinterview which you go to the bathroom, get a hot dog, talk to a friend who walked down the street.

And then, they got a minute and a quarter to complete an interview.

Can't really be very much thought behind the giving of the interview and the receiving of the interview and if there is a real, situation that we're

involved in, then they have got only maybe thirty seconds or twenty seconds to get this answer.

Therefore, I would question whether or not this was taken seriously by anybody who answered it or by the interviewer. Another thing, there is a tremendous pressure on an interviewer who has this kind of pressure to get so many interviews done in such a short period of time.

We have something in our field called "Curbstoning." "Curbstoning" is where you sit down on the curb and answer the questions yourself.

Now, some curbstoners are very bright. Judge Mishler made a very wise suggestion before. I don't know -- maybe it should be done to see if it's the same pencil, handwriting that did it. That's what you can call "curbstoning". Some people are bright enough that they carry five or six pencils, scribble and do all sorts of things. And the questionnaire themselves, bring it back and get paid and go about their business.

Now, the good social scientist has controls of his sample. Therefore, I would never as a social scientist give out questionnaires in a shopping center to an unknown population. I have done this to random

sampling in which a proportion of the sample were called back by me and asked if the interviewer had actually been there controlled by myself. Now, I have never done a survey and I have been doing surveys on and off for about twelve years now I have never done a survey where I did not go out into the field myself and pre-test or pilot study and determine the difficul of answering the question, the validity of the questions. The whole surrounding survey, I know what's going on inthe field before I send anybody else out. I have never had interviewers in the field without good practicing in the office, first. Without practicing interviews and without learning how to ask a question and what their voice sounds like when they ask that question.or when they give somebody something

I have always attempted to match my interviewer to my interviewee. For instance, I did a survey for the New York City Welfare Department in which we are looking at utilization of self-services by hotel clientele. We had 2179 respondents. Now, this was a group of people that represented women with children who were getting welfare. We were not interested in the other categories of Welfare. So, what we did was to create a questionnaire in Spanish, validify to our

English questionnaire and bring it to these women and pay a woman of approximately their own age and social status. In the black neighborhood, we had a woman who is black who brought the questionnaire to those women. She was of their approximate age and status. Where there was white Italian, we sent an Italian interviewer out. So, we matched out interviewer to our interviewee.

As I figure Dr. Martindale said, should be done in last testimony. So that I have to question the very interviewing technique: I have to question the interview itself as having any validity.

Want me to go on because I have a lot more to say about that, but you asked --

Q Did you hear the testimony given by Professor Carlino that he did not go out in the field with any of the eight interviewers?

A I think that's a very poor technique.

Q Did you hear the testimony?

A Yes, I did.

Q Would you say then that's the proper way to conduct a survey without supervision?

A No. I would not say it was the proper way. I would say it's an improper way.

Q Would you continue then, and tell me in addition

to criticizing as you did the non-supervision of the eight young people, could you also say it was the best way of getting the interview across by going to the shopping centers or would you say it would be better to go into areas of homes, businesses and what have you?

A Mr. Schultz, the answers speak for themselves. 21% of the people that they questioned lived out of the area where they did not know where they lived. By their own admission, which left 79% in. I just heard Professor Carlino mention the fact a person might have been in Ocean City or Long Beach. Well, Long Beach has its own village Police Department. So, we certainly wouldn't want an interviewer to be in an area that had its own village Police Department. Therefore, I would question whether or not the 79% represented those people surveyed by the Nassau County Police Department.

THE COURT: Why is that important? I believe it's important that the people whose opinion you value, get an opportunity to give you that opinion. But isn't this really the public reaction against beards and people that are clean-shaven or people with old traditional -- can't even say old traditional because old traditional meant long and knee pants. Short hair as against longer hair rather than really

A If I said

You're a Queens resident and you indicated you have a notion about whether you like or don't like hair because you said it doesn't make any difference to you, right?

THE WITNESS: As a professional sociologist.

THE COURT: Now, you live in Nassau County and you're asked the same question about the authority of policemen. Don't you think you can express an opinion?

THE WITNESS: Let's get to the question.

THE COURT: Whether you're in Long Beach or Merrick or in Baldwin.

THE WITNESS: Well, I can't agree with you, Judge. If somebody says to me what do you think the hair length of the policeman in Newark should be, I should say it really plays no difference to me. If somebody said to me as a citizen now, who works in Nassau County, what do you think of the hair length of policemen in Nassau County? I would say offhand I believe there should be some limit.

Now, I am not in the position to say what that limit should be. I think there -- I agree that the pony-tail would be kind of outlandish and the policeman to give up all restriction on hair would be to lead to this kind of item.

THE COURT: Don't you think your choice would be based on the same logic or emotion, no matter where the policeman worked or operated?

THE WITNESS: Absolutely not. If there are a million people killed in Pakistan, it's very sad. If one kid is killed on my block, I want to cry.

(Continued on next page.)

T16 fls

THE COURT: Go ahead, Mr. Schultz. What you re saying is that when you eat a baloney sandwich in Queens, it tastes different than when you eat it in Nassau County or Newark?

THE WITNESS: When I'm in Queens --

THE COURT: Still the same baloney.

THE WITNESS: No, it is not. It is not at all because what affects my life is much more important than what does not affect my life.

If you said Kalamazoo, Michigan, what do those police do, I shouldn't care. Put them in -- I do care.

THE COURT: That's a little different. But if you did arrive at an opinion you wouldn't have to use the same pencil, Professor, where you were if the subject matter was the same.

THE WITNESS: But the input data is quite different if I'm there. If I lived in --

THE COURT: Let me ask you this. Do you have an opinion now as to whether the Nassau County Police with beards have less or more authority or display a greater respect for public or the public for them? Whether they have beards or not?

THE WITNESS: Do I have -- I would, my hypothesis would be that the beard would lead to a less

authoritative relationship with the population. But the only way I can answer that, I'm here to testify as a professional social scientist, would be to go out and do a survey or a content analysis or a participant observation, which would have some scientific validity.

THE COURT: I understand that. I presume, talking about your personal opinion.

MR. SCHULTZ: He already answered that.

THE COURT: I'm not clear. Who your --

THE WITNESS: From what I learned as in living and in going to school and working is that there would be a decrease in the authoritative leadership.

THE COURT: Would your opinion be any different if you lived in Great Neck?

THE WITNESS: I doubt it.

THE COURT: Would it be any different if you lived in Long Beach?

THE WITNESS: I doubt it.

THE COURT: Even though they have a local municipal police force?

THE WITNESS: Yes.

THE COURT: So what is the relationship?

MR. SCHULTZ: If your Honor please --

THE WITNESS: The contention is in this study.

MR. SCHULTZ: I think we have to bear one thing in mind. Because if you took the residents of Newark, he may be looking at a police officer who is, who has here in a way which is not governed in the same way as it is in Nassau County.

THE COURT: You're talking about this power of suggestion.

MR. SCHULTZ: That's right.

THE COURT: His image of a police officer with a beard might be different than one in Suffolk County, in Nassau, is that what you're saying?

MR. SCHULTZ: That's right.

THE COURT: That wasn't the question asked. There was no picture, there was just a brief description. So, what image was in the head of the respondent, in the mind of the respondent.

MR. SCHULTZ: We have to speculate.

THE COURT: I know, but I thought that Mr. Lippman was saying that was someone who lived in Long Beach.

THE WITNESS: They didn't care about the Nassau

THE COURT: Not a typical example.

THE WITNESS: This is in the sample Nassau

County that we know.

THE COURT: I don't suppose ever inquiring of anyplace exactly the same as ever inquiring of another place that's a philosophical argument.

THE WITNESS: I'm not trying to -- I try to stay away from philosophy as much as possible, Judge Mishler. I'm merely saying that if this survey purports to show the opinion of people living in an area that is surveyed by the Nassau County Police Department, it does not. We know that 21 percent of the people lived, 15 percent lived outside this area, 5 percent of the people we know nothing about and 79 of the people may live in area serviced by Nassau County Police or not.

THE COURT: I accept your figures.

THE WITNESS: That's his figures.

THE COURT: I accept the figures. I don't know what difference it makes whether someone lives in a community serviced by local police or Nassau County police. I can't conceive of any difference in attitude simply because it's serviced by local police.

Well, our grooming regulations, are they diffent than the Nassau County Police Department?

THE WITNESS: I could see where I would want the Nassau County Police to look different than my police. Let's say I'm placing in Floral Park where we got a sharp little police force, I might be very proud of my little police force and want them to look better than the county.

THE COURT: What does "better" mean? With or without beards?

THE WITNESS: What I think is "better"?

THE COURT: I don't know what it has to do with hair, grooming, population towards hair grooming. That's my point.

THE WITNESS: Well, you see, it's an attitude towards your Police Department or somebody else's Police Department. I believe these things may very well be different.

THE COURT: Do you think somebody from Long Beach would say I don't care how they groom them in Nassau County or the rest of Nassau County, so I'll put them down?

THE WITNESS: No difference.

THE COURT: Do you think that accounts for some of it?

THE WITNESS: Some of it.

THE COURT: I think that I understand that could be possible. I thought you were making a different point.

All right, Mr. Schultz. I'm going to have to leave probably in about five minutes to go into that courtroom. When I do, I don't know how long I'll be. It's reading transcripts; could be ten minutes, could be half an hour.

MR. SCHULTZ: Give us another date now.

THE COURT: Finish this. If I can --

MR. SCHULTZ: I think there ought to be a little quiet in the back.

THE COURT: I just have a feeling there are some kind of rooting squad back there. It doesn't do anybody any good. If I could just find out for who --

MR. SCHULTZ: Well, they're not for me.

THE COURT: Not going to do your side any good; not at all.

Go ahead.

BY MR. SCHULTZ:

Q Have you looked at the questions that were presented in the questionnaire that were left with those nineteen hundred and --

A Yes, I did.

what --

Q Do you find any validity in the questions asked?

A None at all.

Q Tell me the reason why.

A Let's start with officer A, crewcut, no facial hair. He does not represent any particular group of officer that I know of in Nassau County. In fact, the picture that I personally get is of the 1940 Marine that fought gung ho.

Q Excuse me, the 1940 Marine, you're talking about, the crewcut?

A Right.

Q Not what you've seen of the Nassau County Police?

A Not what I've seen of the Nassau County Police.

Q Go ahead.

A Officer B, on the other hand, except for the hair slightly over his collar, looks like a Nassau County Policeman to me. It's a very poor scientific technique to take an ideal, which is what officer A is and an extreme and to compare it with something in the middle and proposed to say, of comparing the two extremes so that people would look at either one of these and not really be talking about Nassau County Policemen in either case. Therefore, it has no relationship to the essence of this particular case.

Now, question one, "You are driving at an excessive rate of speed and are signalled to pull over. Which officer's authority are you more likely to respect?"

Well, two of three people said, "When a cop tells me to pull over, I pull over." That's what the answer means to me. I hear a siren and I look behind me, my heart jumps into my mouth and I think how am I going to get out of this and I pull over. Then, we had an even breakdown between A Officer and B Officer. Officer B, this does not indicate authority. Now, a good social scientist knows that authority is a very, very -- is a concept and as a concept, there is many different ways of indicating authority.

Books have been written about authority. For instance, if I said in question 1, you are standing in a bar and a cop with long hair walks in. Would you feel differently than if a cop with short hair comes in? I might get different kinds of answers.

Question 2: Similarly, you require assistance from the police and I went to a police station and both Officers A and B, are present at different desks. Which officer are you more likely to approach? Well, it all depends, if my wife is being attacked in the street, I grab that young man with the short hair. If my son was taking marijuana, I'd bring in the officer with the longer hair. Because, assistance

is also a concept and needs much more thorough investigation.

With consent, we have what we call indicators, we break consent. It's facets dimension, we look at each dimension and then we add that up back up on the 375 and find out what that relationship to authority and the relationship to assistance is. One of those have been indicated in this questionnaire. So, I would have to say that the questions are invalid and the pictures presented of the officer are invalid

Q Would you say there is any reliability in the sampling?

A I have already testified to the fact the sampler is not reliable to the target population.

(Continued on next page.)

Q What about the objective validity in the police officer presented?

A Obviously, there's a base to prevent authority and personality. I don't know what you would call it but you know, the outmoded interest in society, the fascist type, good old crew cut Hitler with officer A, with officer B there is the except for the hair over the collar, there is a Nassau County policeman-looking.

Q So, you say that in the way that A and B was presented that there might be bias in or is bias as in the question itself?

THE COURT: I don't believe they're objective. I don't know if it was meant that way about the researchers, but I do not see objectivity.

Q But is it possible to read bias in it?

A I think it's impossible not to.

Q Impossible not to read bias?

A That's right.

THE COURT: May I point out something. I would be very interested in that town answering. It is not a difficult thing to code. It could have been coded, Nassau County Police Department and other Police Departments in Nassau County. And other jurisdictions, very simple thing to code.

Q That could have been thrown into the computer and percentages could have come up with the --

A Absolutely. Easy to code as any other questionnaire.

Q Easy to code just as locality line, Long Beach --

A It would be difficult, but not impossible, not that difficult. BUt I don't think that it would be necessary for it in particular, this case.

Nassau County Police Department, other police departments and other jurisdictions, would have certainly been adequate. Then, we certainly would have known.

MR. SCHULTZ: I have no further questions.

THE COURT: Mr. Hartman.

CROSS-EXAMINATION

BY MR. HARTMAN:

MR. HARTMAN: I'll make this very quick, your Honor.

Q You say one of the questions might have been, how do you, how would you feel or would feel differently if a police officer with long hair walked into a bar and can you tell me what the relevancy of how a person feels is to the authority or the effectiveness of a police department.

A The question was prior to indicating this there--

Q Could you answer that?

A If I said --

Q Can you answer that question.

How a person feels to have any relevance to --

A The whole questionnaire is concerned with feelings. That's what opinion is.

Q You say that would have been a better question, how would you feel?

A No. I did not say that. I merely suggested a question, another area that might have been asked.

Q Well, how would that question in any way --

THE COURT: I think the question rather referred to long hair and short hair was that it?

THE WITNESS: Yes.

THE COURT: Rather than how you feel?

MR. HARTMAN: I think the question --

THE COURT: Excuse me. I think the witness objected to the description in this.

THE WITNESS: Yes.

THE COURT: Question.

Q There was something about to the extent this witness has testified that if a person walked in a bar with longer hair, how would you feel compared to shorter hair?

I was asking you how that type of question in questioning people, if it came out someone would feel better

with the longer or the shorter? How a person feels in a bar, how would that have relevance to what we are looking for in this sample.

A My answer is that opinion is 99% feeling. Your opinion is based upon your feeling.

Q Now, the feeling, how does that in any way direct itself to the authority of a police officer or the ability of a police officer to function?

How a person feels about his hair.

A You're asking me a very specific questionabout a person's relating to a Police Department.

Now, let's give it a different instance. I'm walking down the street, two long-haired patrolmen come up, I feel scared. I'm mugged. I might be afraid to approach a policeman. The appearance, the meaning of the policeman to me has an awful lot to the relationship that I have with the policeman. If I expect a certain image, don't get that image and it might create a divergence in my mind. What the policeman will do in my mind and what he should do.

Q By asking how you would feel this would give you this type of information on an interview?

A I may or may not ask how you would feel. Create a better question.

Q I was asking you --

A Merely talking about an area that there were others area which indicate authority rather than one which was chosen.

Q But explain, sir, not by -- not just by the questioning as you indicated, before, but how you would feel. Certainly thatin itself --

Now, on the interview you keep talking about the word "interview" that you need trained interviewers by your study of the questionnaire and the survey, you do realize now those were not what would strictly be called in in any way be called an interview.

A So --

Q You understand, sir, the instructions, sir were not put to the person.

A Nobody knows whether those instructions were carried out.

Q You understand that's what the instructions were.

THE COURT: Assume for your purpose the instructions were carried out. Do you think --

THE WITNESS: If the instructions were carried out, there is a lot more to an interviewer than speaking to the person. There is the presentation, self of the interviewer.

Q LEt me ask you this.

A I'm answering your question.

Q I'm asking you this: as far as the word "interview" is as far as talking to the person, if the instructions were carried out and they handed someone a piece of paper and said, please fill out those remarks and spent about thirty seconds to a minute with that person, would this -- they need the type of training that you're referring to when you talk about an independent interview or some sort of question and answer?

A Yes.

Q Absolutely would need a certain amount of training on how you dress when you go on out in the field and how you should look when you go into the field. How your hair should look and in this particular questionnaire, and I would explain the meaning of this questionaire; therefore, they will not try and please me. If I tell them what I'm going, what I'm doing it, then they will try to be as objective as possible rather than not telling them anything.

Now, you talk about the attempt of curbstoning. This was I think told to you approximately a week ago. Have you -- did you make any investigation in preparation to your testimony today in either studying the filled out questionnaires which were made available at Mr. Schulz's request or

studying any way by interviewing the interviewers, which were listed on the sheets which were given to Mr. Schultz last week?

A I had no knowledge that box was available until today.

Q Mr. Schultz, at any time did you talk to the questionnaires that I'm -- sorry, the interviewers, the eight solicitors, so to speak, that were listed here.

A Not at all.

Q So, it is a fact, sir, that you have no evidence to indicate any form of curb -- "curbstoning?" Anyone using 50 different colored pencils?

A Merely an inference, like I heard right here. All today that nobody could make 250 interviews without five hours, without --

Q In other words, you're saying, sir, without equivocation, no one can hand someone those 200 sheets withing a period of approximately five hours without any questioning of this person? No interviewing, having them filled out, you're absolutely sure of that, sir?

A I'm not absolutely sure. I'll be alive tomorrow. I'm pretty sure of it as a social scientist.

Q What evidence do you have other than the fact you say that they did it fairly quickly?

A Thirteen years experience doing this work.

THE COURT: A lot of shoppers, they could have handed two or three, four out and had them fill them out in that instance.

THE WITNESS: How many did they get back?

THE COURT: Not a question of this. In interview type of opinion is taken.

THE WITNESS: You see, the people who give it --

Q The Police Department in Nassau County approximately twenty-four departments. Do you know of any Police Department that wears a different color uniform? Let us say for instance -- out of the twenty-four --

A I think the Oyster Bay, wears a grey. I don't know of any -- I believe I have seen Oyster Bay wearing a grey uniform. I'm not sure.

(Continued on next page.)

r 18 fls

IR:MM
R18

Q If I were to tell you there are none, they all wear the same colored uniforms, can you --

THE COURT: Objection is sustained.

MR. HARTMAN: I'm sorry, excuse me.

Q Can you tell me, sir -- what indicated in the questions to your knowledge of handing someone this piece of paper, the person was being interviewed about a Nassau County police officer?

A Nothing.

Q And if a person was asked in Long Beach, what indicated to that person in those questionnaires that they were not being asked about a Long Beach officer?

A Nothing, but --

Q Thank you.

A Unless --

Q Please, sir. What the problem concerned to those people, who surveyed the -- by Nassau County Police Department -- do you know of any city or village that does not have the exact same regulation as the Nassau County Police Department?

A I am not able there.

Q Have you attempted during -- have you made any attempts before you came to testify here as to any of those facts?

A No.

Q Checking, did you check as to the rules and regulations of the 22 villages and cities?

A Not at all.

Q A check as to their uniforms?

A Saw no reason why I should.

Q Did you make any check into the locations where those interviews were taken?

You know, where any of those interviews were taken?

A I said, the person who did it, doesn't know it.

MR. SCHULTZ: The purpose this morning, I was even aware myself where they were taken.

THE COURT: Because you don't know, doesn't mean the witness doesn't know.

THE WITNESS: The person that did the survey.

THE COURT: The answer is, no. All right.

THE WITNESS: Mr. Douglas just pulled Douglaston out of the book. I think that's one.

Q Can you tell me though, would it be relevant if the person lived in Douglas or lived on the border, which would be Belmont, let us say or wherever it would be closest to Douglaston, as far as what his response to the question would be.

A I have no knowledge.

Q Did you make any study at all during the last week that you had as to whether or not the instructions as to the solicitors were properly carried out by any type of interview or questioning of anybody?

A Instructions as to the solicitor were improper.

Q Did you check whether they were improper carried out?

MR. SCHULTZ: I object.

Q During the last week, have you or to your knowledge, has anyone made any attempt on the behalf of the county to at any way, check or verify the results of this poll or anything leading up to the results of this poll.

A The results of the poll? Yes, sir.

Q As to verify the results of the poll.

A No, sir. To check the results of the poll.

Q When you say -- means analyze.

Q Analyze. Then, analysis was based on merely looking at the current -- rather than looking at -- what led to the conclusion?

THE COURT: This is all argumentative.

MR. HARTMAN: I ave no further questions.

THE COURT: You may step down.

(The witness is excused.)

THE COURT: Maybe we can get a concession on

what --

MR. SCHULTZ: The chief can be --

THE COURT: Suppose you listen. Mr. Hartman.

MR. HARTMAN: Yes, your Honor.

THE COURT: Maybe we can get a concession that will end it.

MR. SCHULTZ: The Chief is still here. Because he testified before he will tell us in your presence how many Nassau County Police Officers have crew cuts.

How many are there, Chief?

THE COURT: What would you testify to?

CHIEF MAICKEL: A survey of the commands showing how many members of the Nassau County Police Department that are assigned to uniforms have crew cuts.

THE COURT: How many?

CHIEF MAICKEL: We have 54 all together.

MR. HARTMAN: I stipulate to that.

THE COURT: He would testify to it.

MR. HARTMAN: No.

MR. SCHULTZ: What about the number of times --

MR. HARTMAN: He certainly would testify to that.

MR. SCHULTZ: How many times, during the past seven years has there been talk, use of gas masks, or gas masks brought to the scene of an area where it

was thought it might be used?

MR. HARTMAN: I would object to that, sir. I would rather if it be done separate --

CHIEF MAICKEL: I don't --

THE COURT: All the chief is saying, he would testify to it. Do you want to cross-examine him?

CHIEF MAICKEL: For the seven-year period, actually brought to a scene and actual use of the gas masks in Scot pak, was 41 times or about once every two months.

Now, On conditions --

THE COURT: Let me ask one question on that: was the use always by uniformed police officers?

CHIEF MAICKEL: This is from the uniform force Uniform --

MR. HARTMAN: Can I ask how many of those were actually put in --

MR. SCHULTZ: He said, 41 times.

THE COURT: You're saying it was brought and how many of those --

MR. HARTMAN: We're talking about use.

THE WITNESS: 41 brought and 41 actual use.

MR. SCHULTZ: How many times was it brought where those scot[illegible]ks or gas masks were brought to the scene and not used?

MR. HARTMAN: Again, one question.

How many of those were gas masks and how many of those were scot paks?

CHIEF MAICKEL: I don't have that breakdown.

THE COURT: What's the difference between the scot paks and the gas masks?

MR. HARTMAN: The scot pak, if it's a dead body, you don't want to smell the dead body. Further, 41 out of those 41 times --

THE COURT: Do you have to use something over your face, entire face or with the hair interfere w'th that, withthe scot pak?

CHIEF MAICKEL: If they break the seal, yes. It would break the seal. The scot pak is, remember, scot pak utilizes a seal. It must adhere to the contour of the face.

THE COURT: Does it go over a smaller area, smaller amount --

CHIEF MAICKEL: I think everyone here --

THE COURT: I do -- I would like to see the --

MR. HARTMAN: I could possibly have my witness explain, sir.

MR. SCHULTZ: How many times. Let's finish now.

How many times were gas masks and scot paks

brought to the scene and not used?

CHIEF MAICKEL: The past seven years, the gas mask and scot paks were at the scene 80 times and were put in use --

THE COURT: Would you agree with that?

MR. HARTMAN: Could the chief possibly explain to us the difference between --

THE COURT: You'll show me.

MR. HARTMAN: The use of the gas mask, we're really talking of scot paks.

THE COURT: I don't know.

MR. HARTMAN: What I meant, the use of the scot pak is for dead bodies. Do you want --

THE COURT: Over the dead body?

MR. HARTMAN: So you won't smell the dead body.

THE COURT: The scot pak is to keep out the odors of a dead body rather than possible poisoning?

CHIEF MAICKEL: Or inhaling of smoke, so forth. I believe they can be used if I remember, can be used for both situation.

THE COURT: Well, then it would be important to know how many scot paks -- I wonder if you can get that information and send it to me?

MR. SCHULTZ: Yes.

CHIEF MAICKEL: I don't think we haven'

documented --

MR. HARTMAN: The answer was probably yes in the case of gas masks.

CHEIF MAICKEL: As far as incidents, I recommended by administrative orders to allcommanding officers to survey within their commands their personnel as relation to the times that either the gas masks or the scot pak was used, and the conditions they were used under.

MR. HARTMAN: I would stipulate, your Honor, it was used 41 times as scot paks. I will fully stipulate to that but I would think that your Honor. I would stipulate it was used zero times for gas masks.

MR. SCHULTZ: I don't think we can make such a stipulation.

THE COURT: I don't think so.

MR. HARTMAN: But the two go together.

THE COURT: What can I do if you can't break it down. I don't know whether it's going to be important but it might be.

I do think there is something to say for --

CHIEF MAICKEL: If my notes, if I could indicate conditions under which both of the 41 times tha either the scot pak or gas mask was used, and it can

be differentiated from that.

MR. SCHULTZ: Maybe then, we can break it down.

THE COURT: Certainly. There is a police officer--

CHIEF MAICKEL: That crime seems where gas is--

THE COURT: What's that?

CHIEF MAICKEL: Crime seems, a crime seems or scot paks. Disturbances, would be gas masks because of the choice of the tank, gas: metal aided. And again there would be the use of the gas mask again, with a possibility or with the use of tear gas as was used here.

Barricades, kids, hostages, situations, again would be the gas mask with the tear gas. Fires, definitely would be the gas mask.

Removing the skadovar (phonetic) would be the scot pak.

THE COURT: How many times did you remove the cadavor?

CHIEF MAICKEL: I haven't got them broken down to each time, your Honor.

MR. SCHULTZ: Now, we have some annual line large disposal of -- could be one or the other -- therefore, we can't stipulate to one or the other.

CHIEF MAICKEL: Again, various type of searches,

gas swimming pools and we had one or two occasions at our Nassau Hospital out there where there was a chemical overflow.

Those were the times under those conditions when they were used.

Now, as far as fire, we have had last year, 1,286 fires within Nassau County. If a place is to be used as fire, it's to be --

THE COURT: Would you like to cross examine or would you stipulate he's testified to this?

MR. HARTMAN: I'll stipulate to it.

THE COURT: All right. Now, the only remaining problem is the gas mask.

MR. HARTMAN: I have my witness.

THE COURT: If I can see that.

MR. HARTMAN: Can the witness come up?

THE COURT: This is the case? If you'll stipulate that is the standard gas mask used? Mark that for identification, it might be a few more minutes in this case and then you can leave.

Where is the regulation gas mask.

MR. PROTITCH: This is the same type of head piece, worn for both masks. One is self-contained unit that you completely, independently, from the back,

the other one is a filtration system.

THE COURT: Well, are you willing to stipulate all this because just making a statement --

MR. SCHULTZ: If your Honor please --

THE COURT: If you're not, then I'll put --

MR. SCHULTZ: But in addition to that, I think I should have the opportunity of bringing an expert to show where the seal breaks and how it breaks.

Merely the fact that shows it fits, and manually, is not enough. I wasn't prepared to go into any testimony about the actual mask itself.

THE COURT: Is this one of the masks that is used?

MR. SCHULTZ: Yes, sir, your Honor.

THE COURT: Do you intend to admit it into evidence?

MR. HARTMAN: Your Honor.

THE COURT: Let it be admitted in evidence.

THE CLERK: So marked as plaintiff's Exhibit 8 in evidence.

THE COURT: If you have anything further within the next week, make up, stipulate on another exhibit what the exhibit means with Mr. Hartmant.

MR. SCHULTZ: Right.

THE COURT: If you can't I'll have to call you back, again.

MR. SCHULTZ: I have no objection to it being kept here as an exhibit, but if it's going to be used on Dr. Martindale to show that it fits on him, I object unless I can have an expert here to show where it doesn't fit.

THE COURT: I just want to see the general areas on the face, that's all.

MR. SCHULTZ: Not whether it breaks the seal though?

THE COURT: Well, I want to see the points of contact. The purpose is that if I believe your doctor's testimony that hair growth does break the seal and it is at the point of contact is, at the hair growth, then I might come to the conclusion it does break the seal.

That's why I want a example. That's all.

MR. PROTITCH: What I'd like to say.

THE COURT: I don't want to take any testimony. I want to be fair.

THE COURT: All right. If you block this you can't breath. Everything works out perfectly. We can't hear him. He's not under oath. I'd have to put

him under oath and permit Mr.Schultz to cross-examine- do you want that? That's something different.

All right, both sides rest.

MR. SCHULTZ: Thank you.

THE COURT: With the reservation that if either side, there is something more that ought to be submitted on the reference to the mask that you will try to stipulate to it.

If you can't agree with the mask-

MR. SCHULTZ: I have it here.

THE COURT: You can't stipulate to it, then I will have a continued hearing just on that limited question. All right.

All right, decision reserved. Thank you, gentlemen.

* * *

END

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -

74 C 1279

ROBERT W. McCUNE,

Plaintiff,

-against-

Memorandum of Decision

LOUIS J. FRANK, COMMISSIONER OF POLICE OF THE COUNTY OF NASSAU and THE POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

December 13, 1974

- - - - - - - - - - - - - - - - - -

This is an action for declaratory judgment brought before the court by an Order to Show Cause obtained by the plaintiff. Plaintiff is a Nassau County police officer who has been charged with violating Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department, which rule sets forth grooming standards for

FPI-88-3-17-72-3021-0153

the members of the Department. /1 Plaintiff alleges that the grooming standards set forth in this Rule abridge his constitutional rights under the first and ninth amendments, the Equal Protection clause of the fourteenth amendment, the Due Process clause of the fifth and fourteenth amendments, as well as his rights under the Civil Rights Act, 42 U.S.C. §1983.

The plaintiff seeks a declaration that Article VIII, Rule 22 is unconstitutional and void, and an injunction restraining Louis J. Frank, Commissioner of Police, from enforcing this rule. In addition, the plaintiff

---

/1 The applicable portion of Article VIII, Rule 22 reads as follows:

> Sideburns shall not extend below the mid-part of the ear and shall be trimmed level.

Teletype Order Number 114, dated April 23, 1971, made the following amendment to Article VIII, Rule 22:

> The Provisions of Article VIII, Rule 22 of the Rules and Regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to a point below 3/4 of an inch above the bottom of the ear.

The plaintiff has been charged with a breach of this Rule in that his sideburns extended to the lower edge of his earlobe and then flared out to a width of at least 1-1/4 inches.

requests that the charges and specifications currently lodged against him be dismissed. Finally, he urges that the appointment procedure followed by the defendant in designating a Trial Commissioner pursuant to sections 75 and 76 of the Civil Service Law of New York be declared unconstitutional. In opposition to the Order to Show Cause, defendants argue that the constitutionality of Rule 22 has previously been adjudicated in the New York State courts by parties who adequately represented the plaintiff's interest, and, therefore, this plaintiff is precluded from relitigating the same issues in federal court.

For the reasons stated below, this plaintiff is not barred on res judicata grounds from proceeding with this action in federal court. On a consideration of the facts presented, Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department is determined to be unconstitutional.

The first of the relevant state suits challenging Article VIII, Rule 22 was brought pursuant to Article 78 of the New York Civil Practice Law and Rules by Daniel Greenwald, a Nassau County police officer and, at the time of the suit, President of the Nassau County Patrolmen's

Benevolent Association (PBA). The plaintiff's claim was dismissed and summary judgment granted to the defendant. Matter of Greenwald v. Frank, 70 Misc. 2d 632 (Nassau County Sup.Ct. 1972). The Appellate Division affirmed the Supreme Court decision, after modifying it to the extent of declaring Rule 22 valid. Matter of Greenwald v. Frank, 40 App. Div. 2d 717 (2d Dept. 1972). This decision was in turn affirmed without opinion by the New York Court of Appeals. Matter of Greenwald v. Frank, 32 N. Y. 2d 862 (1973). The second suit was initiated by Cliff W. Schmidt, also a Nassau County police officer and a PBA president. /2 This suit was dismissed by Justice Kelly of the Nassau County Supreme Court on the ground that it was identical to the Greenwald suit, and therefore, the decision of the New York Court of Appeals dismissing Greenwald's petition was binding. Matter of Cliff W. Schmidt v. Frank,. No. 20014/73 (Nassau County Sup.Ct. February 13, 1974).

Subsequently, Schmidt instituted another suit, in which the PBA joined as a named plaintiff, in the United

---

/2 The Second Circuit Court of Appeals handed down its decision in Dwen v. Barry in August, 1973. 483 F.2d 1126 (2d Cir. 1973). Apparently, this decision was the motivation behind Schmidt's bringing his suit.

States District Court for the Eastern District of New York. Judge Costantino dismissed this action on the ground that the issues had been fully litigated in state court in the Greenwald action and the doctrine of res judicata therefore precluded Schmidt from relitigating the same issues in federal court. Schmidt v. Frank, No. 74 C 314 (E.D.N.Y. April 23, 1974).

The defendants argue that the principles of res judicata should apply to this suit as well, on the ground that the plaintiff McCune was a member of the PBA at the time of the state court actions and therefore his interest has already been adequately represented. However, the application of res judicata requires not only identity of parties but also identity of issues. As stated in United States v. Bridges, 87 F. Supp. (N.D. Cal. 1949):

> "To sustain plea of res judicata, it is essential either that the cause of action be the same or that the exact point was in issue and decided."

See also, Wasoff v. American Automobile Insurance Co., 451 F.2d 767, 769 (5th Cir. 1971); Saylor v. Lindsley, 391 F. 2d 965, 968 (2d Cir. 1968). There is no identity of issues here; the claim which McCune is asserting was not litigated or determined in any of the prior state court proceedings.

FPI—SS—3-17-72—3031—9153

In Greenwald, Justice McCaffrey discussed the validity of Rule 22; however, his decision did not rest on a finding of constitutionality. On the contrary, the plaintiff's petition was dismissed solely on the ground that "the petitioner has not demonstrated that a triable issue exists concerning the relationship of his determining his own personal appearance while in uniform to that of public interest." Matter of Greenwald v. Frank, supra, 70 Misc. 2d at 639. The affirming opinion held:

> "[T]his regulation [Article VIII, Rule 22] does not raise issues which rise to the dignity of constitutional questions."

Matter of Greenwald v. Frank, supra, 40 App. Div. 2d at 717. Thus, prior to the Second Circuit's decision in Dwen v. Barry, 483 F.2d 1126, the New York state courts failed to consider the constitutional issue raised here. Judge Shapiro, in dissent in Greenwald, anticipated the holding in Dwen.

This court is not bound by the determination of Judge Costantino in Schmidt v. Frank. Since the Schmidt case had been dismissed in state court on the authority of Greenwald, Judge Costantino apparently felt that he was bound under res judicata principles to dismiss Schmidt's federal suit. The dismissal in Schmidt adds nothing to

defe.. nts' res judicata argument here.

Mr. Justice Holmes said in McAuliffe v. Mayor, etc., of City of New Bedford, 155 Mass. 216, 29 N.E. 517-18 (1892):

> The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech as well as of idleness by the implied terms of his contract. The servant can not complain, as he takes the employment on the terms which are offered to him. On the same principle the city may impose any reasonable condition upon holding offices within its control. (emphasis added)

Similarly, a policeman's right to unlimited choice in personal appearance is subject to reasonable restriction. Dwen v. Barry, 483 F.2d at 1130, states:

> Personal liberty is not composed simply and only of freedoms held to be fundamental but includes the freedom to make and act on less significant personal decisions without arbitrary government interference. Limitation of such a right requires some showing of public need.
>
> We hold only that choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation.

Dwen further held that the state had ". . . the burden of establishing a genuine public need for the regulation." 483 F.2d at 1131.

The Police Department offered as grounds for promulgating the grooming regulations: (1) the risk in the use of gas masks by bearded police officers; (2) the risk to long haired police officers in capturing a criminal; and (3) the impairment in the effectiveness of the police force because the public generally refuses to recognize the authority of long haired and/or bearded police officers.

Defendants established that the presence of hair on the side of the face and underneath the chin interferes with a proper seal in the use of a gas mask or Scotpak used in police work where noxious gases are present. Use of this equipment would be required in riot control work, in the capture of dangerous criminals where tear gas was used, and in rescue work and occasions where police officers came in contact with cadavers.

Recruits are trained in the use of gas masks. Gas masks or Scotpaks are assigned to vehicles used by the Crime Prevention Unit for police emergency work in the presence of noxious fumes or tear gas. The masks are carried by the members of the Crime Prevention Unit and any other member of the force whose services are

required for the particular emergency. [3] In the last seven years, gas masks or Scotpaks were regularly brought to the scene of a crime or to a situation where rescue work was being performed or to retrieve a dead body. However, defendants were unable to cite a single instance in which a member of the force (not part of the Crime Prevention Unit) was required to use the gas mask.

Defendants claimed herein, as in Dwen, that the bald head makes for greater safety and the converse, i.e., hair in violation of the challenged regulations, offers greater opportunity to a suspect for knocking the police officer off balance, thus disadvantaging him. However, the direction of growth has little to do with the theoretical hazard. It is not the growth below the hairline, or the middle of the ear lobe, but rather the quantity of hair which presents the potential danger. It is conceivable that an officer with afro-style hair or a similar hairdo but no sideburns offers a better handle for the suspect's unbalancing thrust than hair lengths in violation of the regulations.

[3] The Nassau County Police Department has a complement of 3,500 to 4,000 officers and men. The Crime Prevention Unit consists of approximately 150 men.

The efficiency of the police department rests, to a significant degree, on the esteem and respect in which it is held by the public. There might have been a time in the recent past when a substantial number of citizens in Nassau County and neighboring areas felt that the sporting of beards, moustaches, long sideburns and long hair (in various styles and combinations) indicated a lack of discipline, emotional instability and/or an attack on established authority. Defendants offered a few impressions from police officers of public reaction and the unfavorable comment of a few members of the force regarding "pork chop" sideburns, beards and long hair.

Plaintiff, on the other hand, submitted a survey made during the period of October 3, 1974 to October 7, 1974, which is both revealing and persuasive. The survey questioned 1,978 people at random in Nassau County (a few of those questioned were from areas adjoining Nassau County, i.e., Douglaston, Queens). Two questions were put to each

individual.[14] On the first question, 17.4% (344 indicated that they would more likely respect the officer who had the crew-cut with no facial hair; 15% (296) said that they would more likely respect the officer who had long hair; 66% (1,324) said it would make no difference and

---

[14] The following hypothetic situation was given and the following questions asked:

Imagine two police officers as follows:

Officer "A" - crew cut, no facial hair.

Officer "B" - hair slightly over collar, prominent sideburns, and moustache.

Question 1: You are driving at excessive speed and are signaled to pull over. Which Officer's authority are you more likely to respect?

Officer "A" _____
Officer "B" _____
No difference _____

Question 2: You require assistance from the police and you enter a police station. Both Officers "A" and "B" are present at different desks. Which Officer are you more likely to approach?

Officer "A" _____
Officer "B" _____
No difference _____

0.7% (14) made no response. As to the second question, 17.2% (341) found it to be easier to approach the officer who had a crew-cut; 28.7% (568) found that they would be more likely to approach the officer with hair over the collar; 53.7% (1,062) said it would make no difference and 0.4% (7) did not respond.

There is no indication as to how much hair the public will tolerate on the faces and heads of its police, or the point at which a substantial number of the public will lose confidence in the police department because of excessive hair. Nevertheless, the notion that beards, moustaches, sideburns neatly trimmed and hair slightly over the collar make the police officer the subject of ridicule and gossip over the clothes line or in the powder room is not viable in modern day society in Nassau County (and possibly its environs). The public recognizes the authority and submits to the power of the state in the person of a police officer whether crew-cut or clean shaven, or bearded with sideburns and hair slightly over the collar.

This is not to say that the people accept or tolerate unkempt or disheveled hair. To present the view of authority of the state through the police officer, the

state has a right to demand cleanliness and neatness of its uniformed force. The instant regulations, however, are unrelated to this state interest. The defendants have failed to show: (1) that any police officer except those assigned to the Crime Prevention Unit usesgas masks or Scotpaks;(2) that the risk and danger to police officers with hair over the collar and beards is any greater than to those police officers with hair that does not fall below the ear line; or (3) that the public has greater confidence and more respect for authority in police officers whose hair styles would be in conformity with the hair grooming regulations.

Defendants have failed to establish a legitimate state interest in the grooming standards set forth in Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department.

Judgment is granted in favor of plaintiff and against the defendants declaring the rules unconstitutional, void and of no effect and permanently enjoining the defendants from enforcing the same.

Settle judgment on notice.

U. S. D. J.

L. S.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -

74 C 1279

ROBERT W. McCUNE,

Plaintiff,

-against-

LOUIS J. FRANK, COMMISSIONER OF POLICE OF THE COUNTY OF NASSAU and THE POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

- - - - - - - - - - - - - - - - - - -

JUDGMENT

The court having made and filed a memorandum of decision after trial incorporating findings of fact and conclusions of law,

NOW, THEREFORE, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiff have a judgment against the defendant declaring Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department, unconstitutional and null and void, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants are permanently enjoined from enforcing the same.

Jacob Mishler

JACOB MISHLER
U. S. D. J.

Copy Received 12/17/74 - 2:10 PM
Nassau County Attorney's Office
by Burton Joseph - Chief Deputy County Atty

PS

WSN:sg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

ROBERT W. McCUNE,

Plaintiff,

Civil Action File
No. 74C 1279

- against -

NOTICE OF APPEAL

LOUIS J. FRANK, COMMISSIONER OF POLICE OF THE COUNTY OF NASSAU and THE POLICE DEPARTMENT OF THE COUNTY OF NASSAU,

Defendants.

- X

S I R:

NOTICE IS HEREBY GIVEN that defendants above-named hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment which grants to plaintiff a judgment against the defendants declaring Article VIII, Rule 22 of the Rules and Regulations of the Nassau County Police Department unconstitutional and null and void and ordering, adjudging and decreeing that the defendants are permanently enjoined from enforcing the same, entered in this action on the 18th day of December, 1974.

Dated: Mineola, New York
December 18, 1974

Yours, etc.

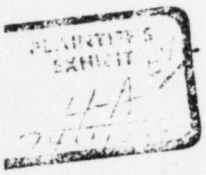
JOHN P. O'SHAUGHNESSY
County Attorney of Nassau County

By _____
WILLIAM S. NORDEN
Deputy County Attorney
Attorney for Defendants
Nassau County Executive Building
Mineola, New York 11501

TO:

RICHARD HARTMAN, Esq.
Attorney for Plaintiff
300 Old Country Road
Mineola, New York 11501

Exhibit 4-A
A-512



Imagine two police officers as follows:

Officer "A" - crew cut, no facial hair.

Officer "B" - hair slightly over collar, prominent sideburns, and moustache.

Question 1: You are driving at excessive speed and are signaled to pull over. Which Officer's authority are you more likely to respect

Officer "A" _____
Officer "B" _____
No difference ✓

Question 2: You require assistance from the police and you enter a police station. Both Officers "A" and "B" are present at different desks. Which Officer are you more likely to approach?

Officer "A" _____
Officer "B" _____
No difference ✓

Your sex:

Male _____
Female ✓

Your age:

Under 20 _____
20-39 _____
Over 39 ✓

Your race:

Caucasian ✓
Black _____
Oriental _____
Other _____

Your approximate annual family income:

$20,000 and over ✓
15,000 - 19,999 _____
12,000 - 14,999 _____
10,000 - 11,999 _____
below 10,000 _____

Do not know _____

Town in which you live: Oceanside

R.B.

Sept 25 1912